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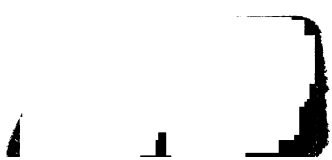

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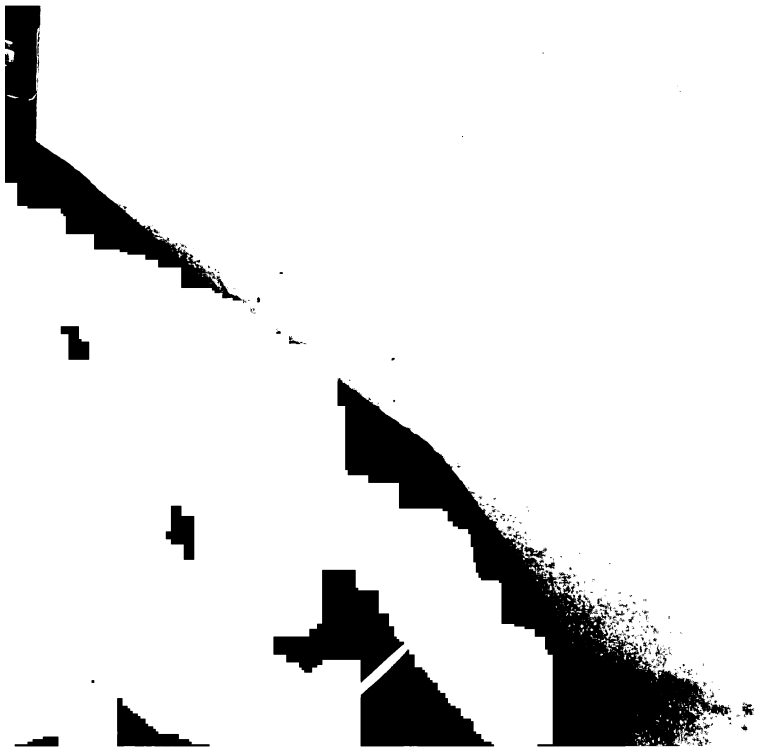

THE

BRITISH CICERO.

VOL. III.

Strahan and Preston,
New-Street Square, London.

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THE

BRITISH CICERO;

OR,

A SELECTION

OF THE

MOST ADMIRED SPEECHES

IN THE

ENGLISH LANGUAGE;

ARRANGED UNDER THREE DISTINCT HEADS OF POPULAR, PARLIAMENTARY, AND JUDICIAL ORATORY:

WITH HISTORICAL ILLUSTRATIONS:

TO WHICH IS PREFIXED,

AN INTRODUCTION TO THE STUDY AND PRACTICE OF ELOQUENCE.

By THOMAS BROWNE, LL. D.

AUTHOR OF "VIRIDARIUM POETICUM," THE "UNION DICTIONARY," &c. &c.

——Quid facundia posset
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CHAP. XIV.

FORENSIC ELOQUENCE.

THE warmest votaries of arts and sciences are content to trace their origin to men of enlightened minds, but all acknowledge that LAW is the emanation of heaven itself. —Many passages from the ancients could be brought in support of this assertion*; but they all fade away in the light of that of HOOKER. "No less," says that elegant writer, "can be acknowledged, than that her seat is the bosom of God, her voice the harmony of the world, all things in heaven and earth do her homage, the very least

* Jurisprudentia regina regnorum, domina populorum, mortalium arbitra, judex civium, divinarum humanarumque rerum scientia, forensis religionis sacerdos et antistita. *Cassiod.* 1. bar. l. 1.

Lex est omnium divinarum rerum regina. Oportet autem eam etiam præstare et bonos et malos, et principem et ducem esse: et secundum hoc regula est justorum et injustorum, et eorum, quæ natura civilia sunt, præceptrix quidem faciendorum, prohibitrix autem non faciendorum. *Chrysippus de legibus.*

Lex non est tantum donum dei, sed ipse Deus, qui donum dedit, qui paret legi, Deo paret et obtemperet. *Arist.* 3. *Politicorum.*

as feeling her care, and the greatest as not exempt from her power."

Sir JOHN DAVIES, to whom nature was by no means niggardly of her choicest gifts, seems to have been fully impressed with the truth of this sublime sentiment, when he says—speaking of the professors of the law, "How often would truth be concealed and suppressed, how oft would fraud lie hid and undiscovered, how many times would wrong escape and pass unpunished, but for the wisdom and diligence of the professors of the law? Doth not this profession every day comfort such as are grieved, counsel such as are perplexed, relieve such as are circumvented, prevent the ruin of the improvident, save the innocent, support the impotent, take the prey out of the mouth of the oppressor, protect the orphan, the widow, and the stranger, in short, as Job speaketh, is she not legs to the lame, and eyes to the blind."

As long as virtue was reverenced in Greece or Rome, the profession of an advocate was looked up to as one of the most useful and honorable. One of the Roman Emperors bore high testimony to those who cultivated this science *. Thus as long as the Grecian and Roman ad-

* Advocationis officium, vitæ hominum necessarium, ut Imp. Anastasius dicebat, principum præmiis dignissimum est. Hoc et alii principes maximè commendarunt, atque inter eos Leo et Anthemius summis laudibus advocatos extulerunt: "Advocati" inquiunt, "qui dirimunt ambigua fata causarum, suæque defensionis viribus, in rebus sæpe publicis ac privatis lapsa erigunt, fatigata reparant: non minus provident humano generi, quam si prœliis atque vulneribus patriam parentesque salvarent. Nec enim solos nostro imperio militare credimus eos, qui gladios, clypeis, et thoracibus nituntur; sed etiam advocatos: militant enim causarum patroni, qui gloriosa vocis confisi munimine, laborantium spem, vitam, et posteros defendunt.

1 L. 4. C. de Advocat. divers. Judic. 2 L. 14. C. eod. 3 Novel. Theod. et Valent. 34.

Nec minus apud Romanos florente Republica advocati honoribus affecti sunt. Rutilii et Galbæ, et Scauri vita, moribus, frugalitate spectati, pervarias

vocates were actuated solely by a love of glory, they found a sufficient reward in defending the innocent or dragging the guilty into light; it should not then be matter of surprize if men of the first virtues and talents were emulous of diſtinguishing themselves at the bar, and consequently that they should be held in the highest estimation by their fellow-citizens; but as soon as vice and corruption pervaded the remotest corner of the empire, and extinguished the last spark of patriotism, then public virtue and the eloquence of the forum took their flight together. A portion of their cloaks, it is true, fell on a few, who would not barter the heavenly gifts for even wealth or titles—but all their efforts were ineffectual to recal the once cloudless glories of the bar, or to rekindle the sparks of emulation even in the breast of youth. The profession of the law in Rome did not sink gradually, but all at once, into such a state of venality and sordid selfishness, that Juvenal* in his seventh satire, speaking of the advo-

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varias ævi sequentes ætates, Censorii et Consulares, et triumphales fuere. Crassi et Antonii aliique innumeri post exercitus prosperrimé ductos, post victorias et trophæa civilibus stipendiorum officiis floruerunt, laureasque fori speciosis certaminibus occupantes, summis gloriæ honoribus fruebantur, Ammianus Marcellinus, lib. 30, Quid M. Tullius? qui ſeipsum immensæ gloriæ patronum habet, tot monumentis honorum eloquentiæ probitatis relicti, cui uni Roma debet, quod Roma esset, impiissima conjuratione deleta?

GUTHERIUS.

* As Mr. CHARLES DRYDEN has very happily translated this passage of the indignant satyrist, we shall give it in his words:

—— "Nor can I wonder at such tricks as these
The purple garments raise the lawyer's fees,
And sell him dearer to the tool that buys;
High pomp and state are useful properties.
The luxury of Rome will know no end;
For still the less we have, the more we spend.
Trust eloquence, to shew our parts and breeding!
Not Tully now could get ten groats by pleading,

cates of his day, tells us in his keen invective, that they used to appear abroad in a stile of the first magnificence, with gems of inestimable value in their rings, as so many baits to allure the unthinking people into a belief that they acquired this immense wealth by their skill and adroitness in their profession.

Having at length offered up all those generous feelings on the altar of gain, a sudden night of intellectual darkness succeeded to those brighter days, when the innocent and oppressed found not only an asylum, but a ready and able champion in every advocate.—This degeneracy spread with such rapidity, that Tacitus, speaking of the practice of the law in his days, says, "of all kinds of merchandize the faith of lawyers is the most venal." Their rapacity in time rose to such a height that it could not be restrained within any bounds—not even by the bitter reproaches of those whom they had conducted through the mazes of chicanery into ruin, or the sighs of the orphan whom they had ſtripped in the cradle, or the tears of the widows which they drank out of cups of gold. In order to set some bounds to their avarice, it was found absolutely necessary to call in the arm of power, and even to appeal to the thunders of the church—decrees after decrees were passed in Spain and Italy to limit the duration of suits, which they were on the eve of rendering immortal, and at the ſame time to regulate the quantum

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Unless the diamond glitter'd on his hand:
Wealth's all the rhet'ric clients understand,
Without large equipage, and loud expence,
The prince of orators would scarce speak sense.
Paulus, who with magnificence did plead,
Grew rich, whilst tatter'd Gallus begg'd his bread,
Who to poor Basilus his cause would trust,
Tho' ne'er so full of pity, ne'er so just?
His clients, unregarded, claim their due:
For eloquence in rags was never true.

of

of their fees *. Something of the latter kind was also attempted in France †.

It is therefore with a mixture of pride and pleasure that we look back to the state of the English bar in the days we have just mentioned—there we shall find truth and eloquence go hand in hand on many occasions—and the decision of the judges balanced in such even scales, that they are justly classed at this day among the most valuable legacies that time has bequeathed to us.—With

* For an account of the rapacity of that body in Italy and France, in the time of Lewis XI. see Du-Cange Gloss. tom. 1. p. 82.

† In the reign of Henry IV. 13th of May 1602, the Parliament issued an edict, requiring that advocates should set down their fees at the bottom of their briefs. The gentlemen of the bar conceived that such an act would tend to reduce them in that respect to the level of attornies, and as their profession required talents superior to pecuniary remuneration, the Parliament published a second decree, by which all those who should refuse to comply with the terms of the first, were to send in their resignation to a secretary appointed to receive and register such resignations; and if any one of these who had in this manner relinquished the profession, should afterwards resume it, he was to be fined in a large sum. The day after the promulgation of this ordinance, all the gentlemen of the long robe assembled in the hall of consultation, and repaired in a body to the house of the secretary, in whose presence they made a solemn declaration of their determination to relinquish the pursuit of the law. The king, who was then at Poitou, having learned this circumstance, and as he was a prince of great mind, he could not help admiring the noble conduct of the advocates, he caused letters patent to be immediately passed, in which he not only repealed the decrees, but established the advocates in all their former immunities. It must be confessed that the French advocates did not abuse these immunities, and that many of them discharged their duty to their clients with great consciousness, and poured forth on many occasions tides of eloquence, that swept away every barrier that cunning could devise, or guilty power carry into execution, with an independence of mind at the same time that reflected additional lustre on their talents; for, as Lord Erskine once observed, "that an independent bar was another fold in the shield of the freedom of the people." But the case was not so in Spain, for the bishop of Leon, in one of his discourses declared, that if the very names of those who were reduced to beggary, through the ignorance, arts, and avarice of their lawyers in that country were written down, they would fill many volumes.

these lights, the influx of learning of every kind—the magnitude of the questions that are daily agitated in our courts of law and equity, of our books of reports, the opinions of the judges, for whatever falls from such heights cannot fail of making a deep impression—the great and nameless advantage of having our laws written in our native language, and almost entirely divested of that worse than "gypsy jargon," law Latin, it is rather surprizing that Forensic Eloquence should be so much neglected. Some undoubtedly of our forensic speeches would not lose their lustre in the most brilliant of those that wielded the thunder of the Greek and Roman forum. This neglect cannot be ascribed to want of genius in our advocates, nor yet to the want of a field almost boundless, to put its powers to the utmost stretch of exertion *. It must be allowed that the study of the law is at once painful and laborious—that it requires a union of all those talents that would singly lead to excellence in almost any other science, and that he who would arrive even to a certain degree of excellence in his profession, must often trim the midnight lamp, and spend some of the sweetest moments of life in converse with the dead. The bitterness, however, of those moments are sweetened by the hopes of the emoluments and honors that are ſhowered

* It is no small encouragement to eloquence at the bar, that of all the liberal professions none gives fairer play to genius and abilities than that of the advocate. He is less exposed than some others, to suffer by the arts of rivalry, by popular prejudices and secret intrigues. He is sure of coming forward according to his merit; for he stands forth every day to view; he enters the list boldly with his competitors, every appearance which he makes is an appeal to the public, whose decision seldom fails of being just, because it is impartial. Interest and friends may set forward a young man with peculiar advantages beyond others, at the beginning, but they can do no more than open the field to him. A reputation resting on theſe aſſistances will ſoon fall. Spectators remark, judges decide, the parties watch, and to him will the multitude of clients never fail to resort, who gives the most approved specimens of his knowledge, eloquence, and industry. BLAIR.

on

on those that carry off the prize in this arduous, and always well-contested career. Having made all those allowances, however, they do not appear to be sufficient to account for that penury of Forensic Eloquence which is to be lamented.—Some ascribe it to special pleading, which Mr. BURKE once called the Chineſe shoe of the mind, and which is said to be one of the causes of its decline in Rome *.

The eloquence of the bar has its object,—truth, which the advocate should ever keep in view, and its limits, which should bound the licentious flights of fancy, and above all declamation should never be resorted to, even in the greatest dearth of argument. The sentiments of BLAIR on this point will probably be preferred to those of any other, and therefore we shall give them in this place. "It must be laid down for a first principle, that the eloquence suited to the bar, whether in speaking or in writing law papers, is of the calm and temperate kind, and connected with close reasoning; sometimes a little play may be allowed to the imagination, in order to enliven a dry subject, and give relief to the fatigue of attention, but this liberty must be taken with a sparing hand. For a florid style, and a sparkling manner, never fail to make the speaker be heard with a jealous ear by the judge. They detract from his weight, and always produce a suspicion of his judgment, his failing in soundness of strength and argument. Purity and neatness of expression, which is chiefly to be studied; a style perſpicuous and proper, which shall not be needlessly overcharged with the pedantry of law terms, and whereby at the same time no affecta-

* Cantores formularum, aucupes syllabarum. Certæ formulæ, conceptionesque verborum præscribantur, a quibus si quis vel syllaba deesset lite cadebat, qua de causa, Cic. lib. 1. de orat. cantores formularum, aucupes syllabarum indigitat. *Donel. de clamor.* infect.

tion shall appear of avoiding those when they are suitable and necessary."

The base purposes to which eloquence has been prostituted, has induced an insinuation that this divine gift is the mere offspring of imagination, and a happy memory; merely calculated to interest our passions at the expence of our judgment; but this is the language of those cold phlegmatic casuists who cannot feel the divine glow of eloquence, and who envy those who are endowed with that talent which never should be hidden in a napkin. Those who argue against the use of eloquence from the abuse of it, might as well cry out against the liberty of the press from the licentiousness of it. If we look into the planetary system, we shall find that these bodies, which are the most benign, at least to this earth, are the most luminous, and their heat the most genial. A finer compliment cannot be paid to eloquence than this, that falsehood would gladly assume her dress and voice. When a barrister therefore has a good cause to defend, why should he not resort to all those images and metaphors that will enforce and elucidate the justness of it in the most impressive and lasting manner on such occasions. It is fair to enlist the passions on his side, and sometimes to permit them to speak in their own tone; this is the spear of Ithuriel with which he ought to touch false witnesses, and to exhibit them in all their native deformity to the eyes of the public. If eloquence then has such powers to varnish over a bad cause, what must be its force when employed in a good one.—"Since it is by the art of eloquence," says St. Austin, "that people are enabled to establish true and false opinions, who shall dare to say that truth should be without errors in the persons of those who are to defend it against falsehood? Can it be believed that those who endeavour

endeavour to enforce a false doctrine should be skilled in the art of conciliating to themselves the good will and attention of their hearers by their address, and that those who support the cause of truth should not be possessed of this skill? That the one should speak of what is false with brevity and similitude; and the other shall discourse of what is true, in so tedious, disgusting, and unnatural a manner, as to give pain to the hearers, and make them think their doctrines not credible, and that those should combat truth with false arguments, and so establish their false opinions, and that these should neither be capable of defending what is true, nor confuting what is false; that the former should have such power over the minds of their hearers as to lead them whither they please; that they may excite in them astonishment, sadness, or joy; that they should animate, move, and turn them as they think proper, and that the latter should remain cold, unaffecting, and without power? Who can be so absurd as to admit such an extravagant thought? Since therefore eloquence, which has such a prodigious power in persuading people either to false or true opinions, lies open to all who are inclined to make use of it, what can be the reason that the good cannot employ themselves in acquiring an art so necessary for the defence of truth? Especially when it is considered that the wicked use it with success in defending injustice, in establishing error, and in accomplishing their pernicious designs." M. ROLLIN, speaking of an accomplished orator, says, "son eloquence est un azyle, mais pour la vertu, ce'st un port salutaire ouvert à tous, mais non aux pirates."

Eloquence is not a mere effusion of the mind, it arises in a great measure from the heart. It is true, that that undaunted love of truth, that ardent zeal for justice, and that noble independence of soul, of which every barrister ought

ought to be so jealous to form themselves. It is these sublime sentiments that lend wings to words—that warm the coldest bosom, and that stamp impressions on memory that time can scarcely efface.

After all, it is not easy to say what juridical eloquence ought to be, or to prescribe the limits which it ought not to pass.—Coke, that great oracle of the law, has told us, what it should not be, in these words: "For he that hunteth after affected words, and following the ſtrong scent of great swelling promises, is many times in winding of them in to shew a little verbal pride, at a dead loss of the matter itself, and ſo *projecit ampullas et susquepedalia verba.*" All coarse raillery, insipid jests, and what Quintilian calls *canina eloquentia*, should be avoided as unworthy of the solemnity of a court of justice, and the learning and dignity of a pleader.

An old philosopher has said, if you wish that your lamp should emit light, you must feed it with oil—it is thus with the human mind, it must be fed with learning —the soil may be fertile, but it will still stand in need of cultivation—whoever therefore wishes to shine at the bar, should not be content with a mere acquaintance with the classics, he should be familiar with them. It is remarkable that all those who have distinguished themselves as eloquent speakers in the civil law, were deeply conversant with the Greek and Roman writers.

In the following selection of speeches, specimens, it is presumed, will be found of almost every kind of forensic eloquence, the figurative, demonstrative, judicial, &c.—independently of the effects which they produced in the causes in which they were delivered, and the honor which they reflect on those that spoke them, they will serve to demonstrate the copiousness, energy, and beauty of the English language.

Mr. JUSTICE HARDINGE's Charge to the JURY, in the case of MORGAN WILLIAM, accused of murder.

At the spring assises in 1806, MORGAN WILLIAM was charged with the wilful murder of MARGARET WILLIAM, his servant; the prisoner's son had been committed on the same charge, but the grand jury did not find the bill against him.

In support of the prosecution it appeared by the examination of the evidence, that one evening in October 1806, the prisoner, on returning home to supper, desired the deceased to get him some bread and butter; but that not being satisfied as to the quantity, some words arose; and the deceased having observed that the ghost of his brother had appeared to her, and that she had been informed by other persons that they had seen the same, he got up and laid hold of her, and shook her violently, struck her with his fist on the side, threw her on the ground, and dragged her about, and gave her some blows with his hands and knees, on the thighs and lower parts of her belly. While the deceased was down she requested the witness, who was a servant of the prisoner, to assist her; but MORGAN WILLIAM, the son, desired him not to interfere, for the deceased had caused much mischief in the family. Soon after the woman appeared to be dead, and was lifted into a chair. Whilst she was in the chair, the prisoner appeared to be distracted with grief, called her dear little PEGGY, begged of her to speak to him, and kissed her on the cheek. Some spirits were then put into her

her mouth, which the witness could not tell whether she swallowed or not, and she was afterwards taken up stairs on the shoulders of MORGAN WILLIAM, the son.

A boy of fifteen years old stated, that the prisoner desired him to say, that the deceased had died in a fit, if any one asked him.

RICHARD GRIFFITH, Esq. the coroner, deposed, that about ten days after the death, an inquest was demanded, and he had directed the body to be taken up: Upon examination, there appeared many marks of violence on the thighs and lower parts of the belly, evidently made by an obtuse instrument, and which he was convinced could not be the effect of natural corruption, nor the marks of any previous eruptive disease; that being satisfied as to the cause of her death, he did open the body. He admitted, however, that there must be some cause of sudden death, which could only be discovered by a dissection of the parts.

Dr. TURTON, on behalf of the prisoner, said he was a physician residing at Swansea, and had sometimes seen cases of sudden death. Being desired to give his opinion as to the probability of discoloration of the skin appearing after death, he informed the court, that the circulation of the blood is the last effort of existence; that after the body is to outward appearance dead, circulation may be for some time going on, though in an imperceptible degree; that while circulation goes on, the vessels must be necessarily in action, and more or less full of blood; and that during this time, even after the appearance of dissolution, they may be broken by any violence or rough handling, and, discharging their contents, occasion discolorations of the skin. He likewise observed, that there were various internal disorders and inflammations of the organs, which might be exasperated by

by violent agitations of the passions or feelings, so as to cause sudden death; that even the passions themselves, by an excess of exertion, might produce an immediate death by spasm, rupture of artery, &c. and that these various causes of sudden death can only be discovered by dissection.

Mr. Justice HARDINGE, in a speech of energy and clearness, recapitulated the evidence to the jury; and the latter, after retiring a few minutes, brought in the verdict *guilty of manslaughter.*

On the following evening, the judge passed sentence on the prisoner in the following impressive Address:—

"MORGAN WILLIAM, you are convicted of manslaughter alone, upon a charge of murder, that it was the express opinion of the court that your guilt had incurred, if the facts in the evidence were believed. The jury therefore must either have set up the judgment of the law against ours, or must have misunderstood the law as delivered by me, or have disbelieved the witnesses, or have been misled by the effect of your character as a peaceable and good-natured man. As to their preference of their own law in direct opposition to that of the court, I cannot, and will not believe it; in other words, I must not believe them to have abused their power and violated their duty. If I was misunderstood, it was not for want of all the efforts in my power to impress the rule and principles upon their minds, with all the accuracy and precision which I could stamp upon them. As to the discredit of the witnesses, it happens that not one of them was impeached by yourself. No witnesses, in my judicial experience, ever delivered their testimonies with more delicacy of caution: one of them, unsolicited, marked in his evidence, that when you killed this woman you had no shoes

shoes on. The difference in effect was trivial, but in his mind it occurred as a feature of softening the outrage. The evidence of the son of that father, a boy to whom you recommended a false account of the death in confidence, apart—and with him *alone*, is confirmed by the woman who laid out the deceased, and she represents that you told the same fiction to her.

"The evidence of the coroner and surgeon, Mr. GRIFFITH, to the cause of the death as occasioned by the violence, must have convinced the jury, when they found you guilty of manslaughter. They must therefore have thought with me, the evidence of Dr. TURTON wasted and thrown away. He enlightened us with certain other causes of death, (reconcilable to other similar appearances,) but which had no ground for them in the fact. His evidence therefore might have been spared. As to your character, if it were true, (and I will assume its truth,) it would prove that you have deceived your neighbours, and that you deserve a character the reverse of that which has been given you. Had a thousand witnesses called you "peaceable and good-natured," this one transaction of pride and revenge would outweigh them all. The jury may have thought that you did not mean to kill, and therefore could not "be guilty of murder:" in other words, may have thought you intended cruelty and mischief in the extreme to this defenceless woman—but short of death. If the facts here supposed were true, the opinion therefore that it was no murder would have been false, and it was reprobated by one with all the energy which, armed by the law, I could give to the opinion I delivered. But could they believe the fact, that you did not mean to kill? You that said the very moment before you made your first attack, "It was in your hands to kill her?"

Perhaps,

Perhaps, they believe you were not master of your own reason; but were heated by passion from the moment of your anger up to the very instant of this poor creature's death. Could they believe it? Could they believe you heated, when, after such a feather of provocation, you fell upon a defenceless person; she did not raise her hand against you, you beat her with your fist upon her bosom and thighs, kicked her, and when she was down pressed your knees upon several parts of her body, inflicting blows and contusions upon her waist? Could they believe you were heated, when, upon her affecting appeal to her fellow-servant, you commanded him to desist from any help to her? Could they believe that you had no deliberate hatred in your mind, when there is a fine mark of your penitence and remorse? Your distraction was the horror of momentary panic, and it came too late? But it was followed up in a short period by the command of a most wicked falsehood in cold blood, impressed upon one of your servants, a falsehood asserted the very next morning by yourself. Hundreds have been executed for murders less aggravated than yours, less depraved, and less cruel. It is the second instance in the county of Glamorgan since my official intercourse with it, (and I shall after this acquittal fear that it will not be the last,) of a master's tyranny to a servant ending in death and murder. Whatever motive of judgment or of conscience induced the jury to deliver this verdict, it will be long felt as a deep stain upon the county, that such guilt as your's could escape; though I impute no blame to the mercy which I cannot understand.

"You have taught your son to resemble you—he did venture to entreat that you would arrest your murdering hand—but when? after the victim had expired! he had

previously

previously fomented your bitterness against this wretched creature, by telling that idle story of the ghost, which you resented by killing her. When he addressed himself to her, supposing her to be alive, it was in terms of unfeeling cruelty; you have done, said he, mischief enough, go to bed. God of mercy! are servants to be thus treated! Is it in this generous island that we can hear of such tyrannies? Had the jury convicted you of the murder, not all your opulence, or the interest it could make, would have given to the short interval between your sentence and your death one additional hour. Who would imagine that I am talking all this time of manslaughter, which is, in its legal acceptance, heated passion, or a wanton act with no peril of life; but ending, by accident unforeseen, in death?

"The jury would themselves ignorantly tell us, that if it be not murder it is very near it, and is the most aggravated of manslaughter, which of course would call upon us to inflict an exemplary punishment upon such an offender. In truth, it is a murder—it is nothing else—not one feature of the mitigated crime appears. It is at the best a depraved and cruel outrage, endangering life and ending in the death for which it was calculated; but at the worst it is also deliberation in cold blood, and with a depraved purpose to kill; in both of these views it is equally a murder, yet how to punish it under its name of manslaughter is a difficulty we are crippled, and yet it is no dishonor to the law that we are—for it never could suppose that a case like this could have the name of manslaughter stamped upon it, by a verdict. We cannot imprison for the offence to which your guilt has been softened by the verdict, for more than one year. The additional punishment

punishment for burning in the hand for manslaughter, (properly understood) was absurd and cruel, or both. But in a case like this, one half laments that it has been suspended. Branded, however, you are still to be; conscience will inflict that penalty; the abhorrence of your character in every feeling heart, will pollute your path and your bed. The day will come, when this murder (as I call it still, and by its true name,) will sit heavily upon your soul, unless the guilt is deeply repented before that hour shall come. The only punishment which is now to be added by the court, instead of burning in the hand, is fine. As your fortune is ample, and as we are desirous to mark our sense of your guilt, we should make that fine exemplary, as well as penal. But here again we are crippled, for the law contemplating what is manslaughter, (not a case like yours,) has told us that it must be a moderate fine."

Notwithstanding the following impressive Addreſs was delivered by a Judge of the United States of America, yet it is presumed that the sentiments which it breathes are so congenial to every Englishman's heart, as to entitle it to a place in this selection.

SENTENCE passed by JUDGE WILDS, on JOHN SLATER, for the inhuman murder of his slave, in January 1806.

"JOHN SLATER, you have been convicted, by a Jury of your country, of the wilful murder of your own slave; and I am sorry to say, the short, impressive, uncontradicted testimony, on which that conviction was founded, leaves but too little room to doubt its propriety.

"The annals of human depravity might be safely challenged, for a parallel to this unfeeling, bloody, and diabolical transaction.

"You caused your unoffending, unresisting slave, to be bound hand and foot, by a refinement in cruelty, compelled his companion, perhaps, the friend of his heart, to chop off his head with an axe; and to cast his body, yet convulsing with the agonies of death, into the water! And this deed you dared to perpetrate in the harbour of Charlestown, within a few yards of the shore, unblushingly in the face of open day. Had your murderous arm been raised against your equal, whom the laws of self-defence, and the more efficacious laws of the land, unite to protect, your crime would not have been without precedent, and would have seemed less horrid. Your personal risque would at least have proved, that though a murderer, you were no coward. But, you too well knew, that this unfortunate man, whom chance had subjected to your caprice, had not, like yourself, chartered to him by the laws of the land, the sacred rights of nature; and that a stern, but necessary policy, had disarmed him of the rights of self-defence: Too well you knew, that to you alone he could look for protection, and that your arm alone could shield him from oppression, or avenge his wrongs; yet that arm you cruelly stretched out for his destruction.

"The counsel who generously volunteered his services in your behalf, shocked at the enormity of your offence, endeavoured to find a refuge, as well for his own feelings, as for those of all who heard your trial, in a derangement of your intellect. Several witnesses were examined to establish this fact, but the result of their testimony, it is apprehended, was as little satisfactory to his mind, as to those of the Jury, to whom it was addressed; I sincerely wish this defence had proved successful; not from any desire to save you from the punishment which awaits you, and which you so richly merit; but from the desire

of

of saving my country from the foul reproach, of having in its bosom so great a monster.

"From the peculiar situation of this country, our fathers felt themselves justified, in subjecting to a very slight punishment, the man who murders a slave: Whether the present state of society requires a continuation of this policy, so opposite to the apparent rights of humanity, it remains for a subsequent legislature to decide. Their attention would, long ere this, have been directed to this subject; but, for the honor of human nature, such hardened sinners as yourself, are rarely found, to disturb the repose of society; the grand Jury of this district, deeply impressed with your daring outrage against the laws both of God and man, made a very strong expression of their feelings on this subject to the legislature; and from the wisdom and justice of that body, the friends of humanity may confidently hope soon to see this, blackest in the catalogue of human crimes, pursued with appropriate punishment.

"In proceeding to pass the sentence, which the law provided for your defence, I confess, I never felt more forcibly the want of power, to make respected the laws of my country, whose minister I am. You have already violated the majesty of those laws—you have profanely pleaded, the law under which you stand convicted—as a justification of your crime—you have held that law in one hand, and brandished your bloody axe in the other, impiously contending, that the *one* gave a licence to the unconstrained use of the *other*.

"But though you will go off unhurt in person by the present sentence, expect not to escape with impunity; your bloody deed has set a mark upon you, which I fear the good actions of your life will not efface. You will be held in abhorrence by an impartial world, and shunned

as a monster by every honest man—your unoffending posterity will be visited for your iniquity, by the stigma of deriving their origin from an unfeeling murderer—your days, which will be but few, will be spent in wretchedness;—and, if your conscience is not steeled against every virtuous emotion; if you be not entirely abandoned to hardness of heart, the mangled mutilated corpse of your murdered slave will ever be present in your imagination: obtruding itself into all your amusements, and haunting you in the hours of silence and repose.

"But should you not regard the reproaches of an offended world; should you bear with callous insensibility, the gnawings of a guilty conscience; yet remember! I charge you remember! that an awful period is fast approaching, and with you is close at hand, when you must appear before a tribunal, whose want of power can afford you no prospect of impunity; when you must raise your bloody hands at the bar of an impartial, omnipotent Judge! Remember! I pray you remember! whilst you have time, that God is just, and that his vengeance will not sleep for ever!"

Mr. JUSTICE HARDINGE's address, previous to passing sentence upon MARY MORGAN, convicted of the murder of her *bastard child.*

"MARY MORGAN—Upon evidence, which leaves not a shade of doubt in the mind, you are convicted of murdering your child, a new-born infant, of your own sex, the offspring of your secret and vicious love; murdering it with a knife, selected as the implement of a purpose deliberately

deliberately formed, before its destined victim came into the world.

"Your hatred of this innocent little sufferer could not have been your motive. It never offended you, and was therefore no object of resentment. It is true, that if the child had lived, it would have proved your crime in its birth; and your shame would have been the consequence of that proof. But was this a reason to kill and murder it? If its first cries to you, its natural parent, for sustenance and care, made it by force your living accuser, could this be a reason to hush these cries, and stifle that breath, (of the unconscious witness against you) with a knife that nearly severed the head from the neck? Had it lived, you might have lost your place; you might have lost other places; you might have sunk into poverty as well as into shame; but was this a reason to kill an infant? Was it a reason to acquire a false character, with a guilty conscience upon your pillow, and cries of the murdered infant at your ear? When did this fear of shame and poverty begin? Was it an obstacle in the way of your criminal intercourse with your lover? No; when you had criminal passions to indulge, and criminal pleasures to enjoy, you had no fear of the risk. When these passions were satisfied, and these pleasures were accusers in their bitter fruit, then you became such a coward, that you have sacrificed your infant's life, the peace and interest of your soul, here and hereafter, to that new-born fear. Alas! how dreadful are the landing places of guilt, when it ascends in its progress! You began with incontinencies criminal in itself, but full of complicated peril in its tendency, to worse crimes. Your next guilt was a mark to the world, in the concealment of your pregnancy, which (besides the vicious act of imposture)

was dangerous to the child you had conceived. Your last crime was the murder of that child, inflicted by yourself.

"You have murdered that human creature, who of all others upon earth had the most affecting right, as well as claim, to your mercy and your love; the offspring of your own guilt, and guilt entailed upon it in some degree by the shame of its descent. At your wild and youthful age, undisciplined, I fear, as well as unenlightened, and with such early habits, and depraved self-indulgence, it is not possible, that a religion, like that of the *New Testament*, which breathes in every page of it love to infants, could have been impressed upon your mind.

"But the God of nature has written a book, which he that will may read." You have read that book, and the letters of it were stamped upon your feelings at your birth. It was a law written upon the living and glorious tablets of the heart, which told you, how unjust it was to punish the offspring of your guilt; for the life you had forced upon it by that guilt alone, you should have exerted every moment of your life, in atoning by a redoubled attention to a daughter so born, for the calamity of such a birth. Instead of bracing yourself to this atonement, you were deaf to her infant cries, and you averted the repetition of them with a murdering hand.

"In this choice of difficulties—in this conflict of chances, what is it you have done? You have encountered the peril of detection and punishment, by a death of shame, as the murderer of your child. You have taken the chance of dying impenitent, or with a conscience ill-prepared for so awful a change, as from this life into the judgments of eternity. You have taken the chance—had you escaped from human detection—had you imposed

upon the world ever so well, of lingering torments upon the rack of a life self-accused, and self-accursed.

"Thus it is—that one guilt produces another, especially in your sex, when gendered into its criminal intercourse with ours. The natural delicacy and modesty of the female character intangle all its progressive guilt, and a succession of accumulated crimes regenerated by the fear (if not by the sense) of shame. At last the energies of the mind are half buried in the confusion of shifted expedients to escape from the importunate eye of the world; but there is another eye, "about the path, and about the bed," from which no darkness can seclude, and from which "no secrets are hid." That eye never is closed, and brings to light, guilt like your's, in a manner for which the sagacity of human conjecture despairs to account.

"Guilt is always a coward; guilt like your's, prompts the offender to accuse himself and prove the crime, by evidence of the fact, in a moment of despair, fear, or surprize. Madness like this comes too late: it is the effect, and the doom of guilt; it is no shelter for it. You have no plea of sudden impulse to this act (not that any such plea could avail you, if in fact it existed); your's was a deliberate murder: the implement of the death's wound obtained, and set apart for its destined object and victim; had you escaped, many other girls (thoughtless and light as you have been) would have been encouraged by that escape to commit your crime, with hopes of your impunity; the merciful turn of your example will save them. Desperate acts like these do often escape from punishment; merciful juries, merciful rules of law, and merciful judges, give numerous occasions to that impunity; if it be a defect, I hope it will never be repeated: but the same juries, the same law,

and the same judges, are firm to their trust in a case like your's. The life you have destroyed, lost its natural parent, when you were its executioner, for guilt of your own. It found a parent in heaven, there is not a more sacred object of that parent's love, (whose children we all of us are,) than a new-born child, created in his image. Its blood is like that of Abel; its cries from the earth, and its complaint is rested in heaven. What your inducement was to sacrifice this pledge of your love, and your crimes, we have no means to ascertain: your conscience knows it well; but we are able to know that it was selfish and cruel.

"I have talked to you hitherto as a judge, preparing and bound by his painful office to inflict the penalty of death upon his convicted prisoner before him; but look up to me! I can give you comfort, and can tell you, without impairing the weight of your doom in this world, that you can turn away your eyes to the Judge of us all, whose mercy has no limits, and whom no sinner can implore in vain, if the tones of penitence and remorse are deep and sincere. You must have expected your fate; and I hope in God, that you have prepared yourself, by a new made heart, for a better world, having made all the human atonement in your power upon earth. To cut off a young creature like you, in the morning of life's day, (for it is little more than a day to the oldest of us all,) is an affliction thrown upon me, which I have no power to describe, or to bear, so well perhaps as I should. You must not think we are cruel; it is to save other infants like your's, and many other girls like you, from the pit to which you have fallen; your sentence and your death are mercy to them, if you have repented of your impious crime, it is mercy to yourself. Had you escaped, your mind and conscience would, or might have been so depraved,

praved, that mercy, winged as it is, could not reach it in time. You have seen the tears and prayers of all around you prove abhorrence of your crime; we have not lost our compassion for your fate, nor our zealous hope, that you will find mercy at the judgment-seat of a redeeming intercessor, who died for you; that is, who died, that penitent sinners, through him, should be rescued from the doom they had incurred, and should expiate their pollutions in the atonement of his blood.

"I am now to pass upon you the awful sentence of your legal, your just, and your inevitable doom in this world, (then he delivered the sentence in a very impressive manner,) and proceeded thus:

"You have heard the sentence, and the imperious will of the law. It affects your body alone; your soul it cannot reach—it is in the hands of your God. May that fountain of infinite love shew mercy to it, when it shall appear before him, upon the day of its final judgment. May it there be acquitted and blest!"

CHARGE of a Judge to a Jury, on a woman who was accused of murdering her child.

"Gentlemen, if one man had any how slain another, if an adversary had killed his opposer, or a woman occasioned the death of her enemy; even these criminals would have been capitally punished by the Cornelian law; but if this guiltless infant, who could make no enemy, had been murdered by its own nurse, what punishment then had not the mother demanded? With what cries and exclamations would she have stunned your ears! What shall we say then, when a woman, guilty of homicide, a mother of the murder of her innocent child, hath comprised all these misdeeds in one single crime; a crime, in its own nature, detestable; in a woman, prodigious;

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in a mother, incredible; and perpetrated against one, whose age called for compassion, whose near relation claimed affection, and whose innocence deserved the highest favour."

Speech of John Philpot Curran, Esq.

In defence of the Rev. Charles Massey, against the Marquis of Headfort, for criminal conversation with the plaintiff's wife.

"Never so clearly as in the present instance, have I observed that safeguard of Justice, which providence hath placed in the nature of man. Such is the imperious dominion with which truth and reason wave their sceptre over the human intellect, that no solicitation, however artful, no talent, however commanding, can reduce it from its allegiance. In proportion to the humility of our submission to its rule, we do rise into some faint emulation of that ineffable and presiding divinity, whose characteristic attribute it is,—to be covered and bound by the inexorable laws of its own nature, so as to be *all-wise* and *all-just* from necessity, rather than election. You have seen it in the learned advocate who has preceded me, most peculiarly and strikingly illustrated—you have seen his great talents, perhaps the first in any country, languishing under a cause, too weak to *carry* him, and too heavy to be carried by him. He was forced to dismiss his natural candor and sincerity, and, having no merits in his case, to substitute the dignity of his own manner, the resources of his own ingenuity, over the overwhelming difficulties with which he was surrounded. Wretched client! unhappy advocate! what a combination do you form! but such is the condition of guilt—its commission mean and tremulous—its defence artificial and insincere—its prosecution candid and simple—its condemnation dignified

dignified and austere. Such has been the defendant's guilt—such is his defence—such shall be my address—and such I trust your verdict. The learned counsel has told you, that this unfortunate woman is not to be estimated at forty thousand pounds—fatal and unquestionable is the truth of this assertion—Alas! gentlemen, she is no longer worth any thing—faded—fallen—degraded—and disgraced,—she is worth less than nothing! But it is for the honor, the hope, the expectation, the tenderness, and the comforts, that have been blasted by the defendant and have fled for ever, that you are to remunerate the plaintiff, by the punishment of the defendant. It is not her present value which you are to weigh,—but it is her value at that time, when she sat basking in her husband's love, with the blessings of heaven on her head, and its purity in her heart, when she sat amongst her family, and administered the morality of the parental board—estimate that past value—compare it with its present deplorable diminution—and it may lead you to form some judgment of the severity of the injury, and the extent of the compensation.

"The learned counsel has told you, you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just, but has he treated you fairly by its application? His cause would not allow him to be fair,—for, why is the rule adopted in this single action? Because this being peculiarly an injury to the most susceptible of all human feelings—it leaves the injury of the husband to be ascertained by the sensibility of the jury, and does not presume to measure the justice of their determination, by the cold and chilly exercise of his own discretion. In any other action, it is easy to calculate. Your tradesman's arm is cut off, you can measure the loss which he has sustained—but the wound

of

of feeling, and the agony of the heart, cannot be judged by any standard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the present suffering of the husband, by the present guilt, the delinquency, and degradation of his wife. As well might you, if called on to give compensation to a man for the murder of his dearest friend—pay the measure of his injury, by weighing the ashes of the dead. But it is not, gentlemen of the jury, by weighing the ashes of the dead, that you would estimate the loss of the survivor.

"The learned counsel has referred you to other cases, and other countries, for instances of moderate verdicts. I can refer you to some authentic instances of just ones. In the next county, 15,000 *l.* against a subaltern officer. In Travers and M'Carthy, 5000 *l.* against a servant; In Tighe against Jones, 10,000 *l.* against a man not worth a shilling. What then ought to be the rule, where rank, and power, and wealth, and station, have combined to render the example of his crime more dangerous —to make his guilt more odious—to make the injury to the plaintiff more grievous, because more conspicuous? I affect no levelling familiarity, when I speak of persons in the higher ranks of society—distinction of orders are necessary—and I always feel disposed to treat them with respect, but when it is my duty to speak of the errors by which they are degraded, I am not so fastidious as to shrink from that conduct, when the truth is essential to their dissection. In this action, the condition, the conduct, and circumstances of the party, are justly and peculiarly the objects of your consideration. Who are the parties? The plaintiff young, amiable, of family and education; of this generous disinterestedness of his heart you can form an opinion, even from the evidence of the defendant,

defendant, that he declined an alliance which would have added to his fortune and consideration, and which he rejected for an unportioned union with his present wife. She, too, at that time young, beautiful, and accomplished, and feeling her affection for her husband increase, in proportion as she remembered the ardor of his love, and the sincerity of his sacrifice. Look now to the defendant! I blush to name him! I blush to name a rank, which he has tarnished!—and a patent that he has worse than cancelled. High in the army, high in the state—the hereditary counsellor of the king—of wealth incalculable—and to this last, I advert with an indignant and contemptuous satisfaction, because, as the only instrument of his guilt and shame, it will be the means of his punishment, and the source of compensation for his guilt.

"But let me call your attention distinctly to the question you have to consider. The first is the fact of the guilt. Is this noble lord guilty? His counsel knew too well, they would have mortified his vanity, had they given the smallest reason to doubt the splendour of his atchievement. Against any such humiliating suspicion, he had taken the most studious precaution, by the publicity of the exploit. And here, in this court, and before you, and in the face of the country, he has the unparalleled effrontery of disdaining to resort, even to a *confusion of evidence*—his guilt is established; your next question is, the damages you should give. You have been told, that the amount of the damages should depend on circumstances. You will consider these circumstances, whether of aggravation, or mitigation. His learned counsel contended, that the plaintiff has been the author of his own suffering, and ought to receive no compensation for the ill consequences of his own conduct. In what

what part of the evidence do you find any foundation for that aspersion? He indulged her, it seems, in dress —generous and attached, he probably indulged her in that point beyond his means; and the defendant now impudently calls on you, to find an excuse for the adulterer, in the fondness and liberality of the husband; but you have been told, that the husband connived. Odious and impudent aggravation of injury—to add calumny to insult, and outrage to dishonor. From whom, but a man hackneyed in the paths of shame and vice—from whom, from a man having no compunctions in his own breast to restrain him, would you expect such brutal disregard, for the feelings of others—from whom, but the cold-blooded veteran seducer—from what, but from the exhausted mind—the habitual community with shame —from what, but from the habitual contempt of virtue and of man, could you have expected the arrogance—the barbarity—and folly of so foul—because so false an imputation? He should have reflected—and have blushed—before he suffered so vile a topic of defence to have passed his lips. But, ere you condemn, let him have the benefit of the excuse, if the excuse be true. You must have observed here, his counsel fluttered, and vibrated—between what they called connivance, and injudicious confidence; and now affecting to distinguish, they have confounded them both together.—If the plaintiff has connived, I freely say to you, do not reward the wretch, who has prostituted his wife, and surrendered his own honor—do not compensate the partner of his own shame, and the willing instrument of his own infamy. But as there is no sum so low, to which such indifference, if true, ought not to reduce your verdict, so neither is any so high—to which such a charge might not inflame it, if such a charge be false. Where is the single

single fact in this cause on which the remotest suspicion of connivance can be hung?—Odiously has the defendant endeavoured to make the softest and most amiable feelings of the heart, the pretext of his slanderous imputations. An ancient and respectable prelate, the husband of his wife's sister, chained down to the bed of sickness, perhaps to the bed of death. In that distressing situation, my client suffered that wife to be the bearer of consolation to the bosom of her sister—he had not the heart to refuse her—and the softness of his nature is now charged in him as a crime. He is now insolently told, that he connived at his dishonor, and that he ought to have foreseen, that the mansion of sickness and of sorrow, would have been made the scene of assignation and of guilt. On this charge of connivance, I will not further weary you, or exhaust myself,—I will add nothing more, than that it is as false as it is impudent—that in the evidence it has not a color of support, and that by your verdict you should mark it with reprobation. The other subject, namely, that he was indiscreet in his confidence, does, I think, call for some discussion; for I trust, you see, that I affect not any address to your passions, by which you may be led away from the subject.—I presume merely to separate the parts of this affecting case, and to lay them item by item before you, with the coldness of detail, and not with any coloring or display of fiction or fancy. Honorable to herself was his unsuspecting confidence, but fatal must we admit it to have been, when we look to the abuse committed upon it; but where was the guilt of this indiscretion? He did admit this noble lord, to pass his threshold, as his guest. Now the charge which this noble lord builds on this indiscretion is, "thou fool, thou hast confidence in my honor! and that was a guilty indiscretion—thou simpleton, thou

thou thoughtest that an admitted and a cherished guest would have respected the laws of honor and hospitality, and thy indiscretion was guilt.—Thou thoughtest that he would have shrunk from the meanness and barbarity of requiting kindness with treachery, and thy indiscretion was guilt."

"Gentlemen, what horrid alteration in the treatment of wives would such reasoning recommend? Are they to be immured by worse than eastern barbarity? Are their principles to be depraved—their passions sublimated, every finer motive of action extinguished by the inevitable consequences of thus treating them like slaves? Was a liberal and generous confidence in them to be the passport of the adulterer, and the justification of his crimes?

"Honorably, but fatally for his own repose, he was neither jealous, suspicious, nor cruel.—He treated the defendant with the confidence of a friend,—and his wife with the tenderness of a husband. He did lean to the noble marquis, the physical possibility of committing against him the greatest crime which can be perpetrated against a man of an amiable heart and refined education.—In the middle of the day, at the moment of divine worship, when the venerable husband was on his knees, directing the prayers and thanksgiving of his congregation to their God—that moment did the remorseless adulterer choose to carry off the deluded victim from her husband—from her child—from her character—from her happiness,—as if not intent to leave his crime confined to its miserable exaggerations, unless he gave it a cast and color of factitious sacrilege, and impiety. Oh, how happy had it been, when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which, like the fabled bark of Styx, the

the exile was eternal; how happy, at that moment, so teeming with misery and with shame, if you, my lord, had met him, and could have accosted him in the character of that good genius, which had abandoned him. How impressively you might have pleaded, in the cause of the father, of the child, of the mother, and even of the worthless defendant himself. You would have said, "is this the requital that you are about to make, for the respect and kindness, and confidence in your honor? Can you deliberately expose this young man, in the bloom of life, with all his hopes before him? Can you expose him, a wretched out-cast from society, to the scorn of a merciless world? Can you set him adrift, upon the tempestuous ocean of his own passions, at this early season, when they are most headstrong; and can you cut him out from the moorings of these domestic obligations, by whose cable he might ride at safety from their turbulence? Think of, if you can conceive it, what a painful influence arises from the sense of shame, from the sacred religion of the heart, in quelling the passions, in reclaiming the wanderings, in correcting the disorders of the human heart: do not cruelly take from him the protection of these attachments. But if you have no pity for the father, have mercy at least upon his innocent and helpless child, do not condemn him to an education scandalous and neglected—do not strike him into that most dreadful of all human conditions, the orphan age that springs not from the grave, that falls not from the hand of providence, or the stroke of death; but comes before its time, anticipated and inflicted by the remorseless cruelty of parental guilt. For the poor victim herself—not yet immolated,—while yet balancing upon the pivot of her destiny, your heart could not be cold, nor your tongue be wordless. You would have said to him, pause, my

lord, while there is yet a moment for reflection; what are your motives, what are your views, what your prospects from what you are about to do? You are a married man, the husband of the most amiable and respectable of women; you cannot look to the chance of marrying this wretched fugitive: between you and such an event, there are two sepulchres to pass. What are your inducements? Is it love, think you? No, do not give that name to any attraction you can find in the faded refuse of a violated bed. Love is a noble and generous passion, it can be founded only on a pure and ardent friendship, on an exalted respect, on an implicit confidence in its object. Search your heart, examine your judgment, do you find the semblance of any one of these sentiments to bind you to her? What could degrade a mind, to which nature or education had given part, or stature, or character, into a friendship for her? Could you repose upon her faith? Look in her face, my lord, she is at this moment giving you the violation of the most sacred of human obligations, as the pledge of her fidelity—she is giving you the most irrefragable proof that as she is deserting her husband for you, so she would without a scruple abandon you for another. Do you anticipate any pleasure you might feel, in the possible event of your becoming the parents of a common child? She is at this moment proving to you, that she is as dead to the sense of parental as of conjugal obligation; and that she would abandon your offspring to-morrow, with the same facility with which she now deserts her own. Look then at her conduct, as it is, as the world must behold it, blackened by every aggravation that can make it either odious, or contemptible; and unrelieved by a single circumstance of mitigation, that could palliate its guilt, or retrieve it from abhorrence.

"Mean,

"Mean, however, and degraded as this woman must be, she will still, (if you take her with you) have strong and heavy claims upon you.—The force of such claims does certainly depend upon circumstances; before, therefore, you expose her fate to the dreadful risque of your caprice and ingratitude, in mercy to her, weigh well the confidence she has placed in your future justice and honour, much more than you think, by what topics can her cause be pleaded to a sated appetite, to an heart that repels her, to a just judgment in which she never could have been valued or respected. Here is not the case of an unmarried woman; with whom a pure and generous friendship may insensibly have repaid with a more serious attachment, until at last her heart became too deeply pledged to be reassumed: if so circumstanced, without any husband to betray, or child to desert, or motive to restrain, except what related solely to herself, her anxiety for your happiness made her overlook every other consideration, and commit her history to your honour; in such a case, (the strongest and the highest that man's imagination can suppose,) in which you at least could see nothing but the most noble and disinterested sacrifice; in which you could find nothing but what claimed from you the most kind exalted sentiment of tenderness, and devotion, and respect; and in which the most fastidious rigour would find so much more subject for sympathy than blame.—Let me ask you, could you, even in that case, answer for your own justice and gratitude! I do not allude to the long and pitiful catalogue of paltry adventures in which it seems your time has been employed. —The coarse and vulgar successions of casual connections, joyless, loveless, and unendeared: but do you not find upon your memory some trace of an engagement of the character I have sketched? Has not your sense

of what you would own in such a case, and to such a woman, been at least once put to the test of experiment? Has it not at least once happened, that such a woman, with all the resolution of strong faith, flung her youth, her hope, her beauty, her talent, upon your bosom; weighed you against the world, which she found but a feather in the scale, and took you as an equivalent? How did you then acquit yourself? Did you prove yourself worthy of the sacred trust reposed in you? Did your heart so associate with hers, as to leave her no room to regret the splendid and disinterested sacrifice she had made? Did her soul find a pillar in the tenderness of yours, and a support in its firmness? Did you preserve her high in her own consciousness, framed in your admiration and friendship, and happy in your affection? You might have so acted, and the man that was worthy of her, would have perished rather than not so act, as to make her delighted, with having confided so sacred a trust to his honour—did you so act? Did she feel that, however precious to your heart, she was still more exalted and honored in your reverence and respect? Or did she find you coarse and paltry, fluttering and unpurposed, unfeeling and ungrateful? You found her a fair and blushing flower, its beauty and its fragrance bathed in the dew of heaven. Did you so tenderly transplant it, as to preserve that beauty and fragrance unimpaired? Or did you so rudely cut it, as to interrupt its nutriment, waste its sweetness, to blast its beauty, to bow down its faded and sickly head? And did you at last fling it like "a loathsome weed away?" If then to such a woman, so cloathed with every title that could ennoble and exalt, and endear her to the heart of man, you could be cruelly and capriciously deficient, how can a wretched fugitive like this, in every point her contrast, hope

hope to find you so just? Send her then away. Send her back to her home, to her child, to her husband, to herself. Alas, there was none to hold such language to this noble defendant; he did not hold it to himself. But he paraded his despicable prize in his own carriage, with his own retinue, his own servants—this veteran Paris, hawked his enamoured Helen, from this western quarter of the island to a sea-port in the eastern, crowned with the acclamations of a senseless and grinning rabble, glorying and delighted, no doubt, in the leering and scoffing admiration of grooms and ostlers, and waiters, as he passed.

"In this odious contempt of every personal feeling, of public opinion, of common humanity, did he parade this woman to the sea-port, whence he transported this precious cargo to a country where her example may be less mischievous than in her own; where I agree with my learned colleague in heartily wishing he may remain with her for ever. We are too poor, too simple, too unadvanced a country, for the example of such atchievments. When the relaxation of morals is the natural growth and consequence of the great progress of arts and wealth, it is accompanied by a refinement that makes it less gross and shocking: but for such palliations we are at least a century too young. I advise you, therefore, most earnestly to rebuke this budding mischief, by letting the wholesome vigor and chastisement of a liberal verdict speak what you think of its enormity. In every point of view in which I can look at the subject, I see you are called upon to give a verdict of bold, and just, and indignant, and exemplary compensation. The injury of the plaintiff demands it from your justice. The delinquency of the defendant provokes it by its enormity. The rank on which he has relied for impunity, calls upon you to tell him, that crime does not ascend to the rank of the perpetrator, but the perpetrator sinks from his rank, and

descends to the level of his delinquency. The style and mode of his defence is a gross aggravation of his conduct; and a gross insult upon you. Look upon the different subjects of his defence as you ought, and let him profit by them as he deserves; vainly presumptuous upon his rank, he wiſhes to warn you by the despicable consideration. He next resorts to a cruel aspersion upon the character of the unhappy plaintiff, whom he had already wounded beyond the possibility of reparation; he has ventured to charge him with connivance: as to that, I will only say, gentlemen of the jury, do not give this vain boaster a pretext for saying, that if the husband connived in the offence, the jury also connived with reparation. But he has pressed another curious topic upon you: after the plaintiff had come to suspect his designs, and the likelihood of their being fatally successful, he did not then act precisely as he ought. Gracious God, what an argument for him to dare to advance! It is saying this to him: I have abused your confidence, your hospitality; I laid a base plan for the seduction of the wife of your bosom; I succeeded at last, so as to throw in upon you that most dreadful of all suspicions to a man fondly attached, proud of his wife's honour, and tremblingly alive to his own; that you were possibly a dupe to the confidence in the wife as much as in the guest, in this so pitiable distress, which I myself had studiously and deliberately contrived for you, between hope and fear, and doubt and love, and jealousy and shame; one moment shrinking from the cruelty of your suspicion; the next, fired with indignation at the facility and credulity of your acquittal: in this labyrinth of doubt, in this phrenzy of suffering, you were in it collected and composed; you did not act as you might have done, if I had not worked you to madness, and upon that very madness which I have inflicted upon you, upon the very completion

pletion of my guilt, and of your misery, I will build my defence. You will not act critically right, and therefore are unworthy of compensation! Gentlemen, can you be dead to the remorseless atrocity of such a defence! And shall not your honest verdict mark it as it deserves? But let me go a little farther; let me ask you, for I confess I have no distinct idea of what should be the conduct of an husband so placed, and who is to act critically right? Shall he lock her up, or turn her out? Or enlarge or abridge her liberty of acting as she pleases? Oh, dreadful Areopagus of the tea-table! How formidable thy inquests, how tremendous thy condemnations! In the first case he is brutal and barbarous, as an odious eastern despot. In the next; what! turn an innocent woman out of his home, without evidence or proof, but merely because he is vile and mean enough to suspect the wife of his bosom, and the mother of his child! Between those extremes, what intermediate degree is he to adopt? I put this question to you, do you at this moment, uninfluenced by any passion as you now are, but cool and collected, and uninterested as you must be, do you see clearly this proper and exact line which the plaintiff should have pursued? I much question if you do. But if you did or could, must you not say, that he was the last man from whom you should expect the coolness to discover, or the steadiness to pursue it? And yet this is the outrageous and insolent defence that is put forward to you. My miserable client, when his train was on fire, and every fiend of hell was let loose upon his heart, he should then, it seems, have placed himself before his mirror, he ſhould have taught the stream of agony to flow decorously down his forehead, he should have composed his features to harmony, he should have walked with grace, and groaned in melody. But look

farther to this noble defendant, and his honorable defence; the wretched woman is to be successively the victim of seduction and of slander. She it seems received marked attention—here I confess, I felt myself not a little at a loss. The witnesses could not describe what those marked attentions were, or are. They consisted, not if you believe the witnesses that swore to them, in personal approach, or contact whatsoever—nor in any unwarrantable topics of discourse. Of what materials then were they composed? Why, it seems, a gentleman had the insolence at table to propose to her a glass of wine, and ſhe, most abandoned lady! instead of flying like an angry parrot at his head, and besmirching and bescratching him for his insolence, tamely and basely replies, "part, Sir, if you please!" But, gentlemen, why do I advert to this folly, this nonsense? Not surely to vindicate from censure the most innocent, and the most delightful intercourse of social kindness, of harmless and cheerful courtesy,—"where virtue is, those are most virtuous." But I am soliciting your attention, and your feeling, to the mean and odious aggravation—to the unblushing and remorseless barbarity of restoring the wretched woman he had now undone. No good he has done, he has disclosed to you the point in which he can feel; for, how imperious must that avarice be which could resort to so vile an expedient of frugality? Yes, I will say, that with the common feelings of a man, he would have rather suffered this thirty thousand a year as a compensation to the plaintiff, than saved a shilling of it by so vile an expedient of economy. He would rather have starved with her in a gaol, he would rather have sunk with her into the ocean, than to have so vilified her—than to have so degraded himself. But, it seems, gentlemen, and indeed you have here been told, that

that long as the course of his gallantry has been, and he has grown grey in the service, it is the first instance he has been called upon for damages. To how many might it have been fortunate, if he had not that impunity to boast? Your verdict will, I trust, put an end to that encouragement in guilt, that is built upon impunity. The devil, it seems, has saved the noble marquis harmless in the past; but your verdict will tell him the term of that indemnity is expired; that his old friend and banker has no more effects in his hands; and that if he draws any more upon him he must pay his own bills himself. You will do much good by doing so, you may not enlighten his conscience, nor touch his heart, but his frugality will understand the hint. It will adopt the precedence of age, and deter him from pursuits, in which, though he may be insensible of shame, he will not be regardless of expence. You will do more, you will not only punish him in his tender part, but you will weaken him in his strong one—his money. We have heard much more of this noble lord's wealth, and much of his exploits, but not much of his accomplishments or his wit. I know not that his verses have even soared to the poet's corner. I have heard it said, that an ass laden with gold could find his way through the gates of the stongest city. But, gentlemen, lighten the load upon his back, and you will compleatly curtail the mischievous faculty of a grave animal, when the momentum lies not in his agility, but his weight, not in the quantity of motion, but the quantity of his matter. There is another ground on which you are called upon to give most liberal damages, and that has been laid by the unfeeling vanity of the defendant. This business has been marked by the moſt elaborate publicity. It is very clear that he has been allured by the glory of the chace, and not the value of the game. The poor

object

object of his pursuit could be of no value to him, or he would not have so wantonly and cruelly, and unnecessarily, advised her. He might easily have kept this unhappy intercourse, an unsuspected secret. Even if he had wished for her elopement, he might easily have so contrived it, that the place of her retreat would be professedly undiscoverable; yet though, even the expence, a point so tender to his delicate sensibility, of concealing, could not be one fortieth of the cost of publishing her, his vanity decided him in favor of glory and publicity. By that election he has in fact put forward the Irish nation and its character, as often, and so variously calumniated, upon its trial before the tribunal of the empire; and your verdict will this day decide, whether an Irish jury can feel with justice and spirit upon the subject that involves conjugal affection and comfort, domestic honour and repose—the certainty of peace—the weight of public opinion—the gilded and presumptuous criminality of over-running rank and station. I doubt not, but he is at this moment, reclined on a silken sopha, anticipating that submissive and modest verdict, by which you will bear gently on his errors; and expecting from your patriotism, no doubt, that you will think again, and again, before you condemn any great portion of the immense revenue of a great absentee to be detained in the nation that produced it, instead of being transmitted, as it ought to be, to be expended in the ſplendor of another country. He is now probably waiting for the arrival of the report of this day, which I understand a famous note-taker has been sent hither to collect, (Lockhart, the gentleman you disturbed). Gentlemen, let me assure you, it is more, much more, the trial of you, than of the noble marquis, of which this comforted recorder is at this moment collecting the materials. His noble

noble employer is now expecting a report to the following effect. "Such a day came on to be tried at Ennis, before a special jury, the cause of Charles Massey against the most noble the marquis of Headfort." It appeared that the plaintiff's wife was young, beautiful, and captivating. The plaintiff himself a person fond of this beautiful creature to distraction, and both doating on their child; but the noble marquis approached her, the pleasure of glory nodded in his breast. Not the goddess Minerva, but the goddess Venus had lighted up his casque, "the fire that never tires—such as many a lady gay had been dazzled with before." At the first advance she trembled, at the second she struck to the redoubted son of Mars, and pupil of Venus. The jury saw it was not her fault (it was an Irish jury); they felt compassion for the tenderness of the mother's heart, and for the warmth of the lover's passion. The jury saw on the one side, a young entertaining gallant; on the other, a beauteous creature, of charms irresistible. They recollected that Jupiter had been always successful in his amours, although Vulcan had not always escaped some aukward accidents. The jury were composed of the fathers, brothers, husbands—but they had not the vulgar jealousy, that views better things of that sort with rigour, and wishing to assimilate their country in many respects to England, now that they are united to it, they, like English gentlemen, returned to their box, "with a verdict of six-pence damages, and six-pence costs." Let this be sent to England; I promise you your odious secret will not be better kept than that of the wretched Mrs. Maffey. There is not a bawdy-house chronicle in London, in which the epitaph which you have written even on yourselves will not be published, and our enemies will delight, as the spectacle of our precarious depravity, in seeing that we

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can be rotten before we are ripe. I do not suppose it; I do not, cannot, will not believe it; I will not harrow up myself with the anticipated apprehension.

"There is another consideration, gentlemen, which I think most imperiously demands a more vindictive award of exemplary damages, and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity or convention; in savage nations of the first, in polished of the latter, *but the hospitality of an Irishman* is not the running account of posted and ledgered courtesies, as in other countries; it springs, like all his qualities, his faults, his virtues—directly and from his heart. The heart of an Irishman is in his nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is social, and he is hospitable. This sacrilegious intruder has prophaned the religion of that sacred altar, so elevated in our worship, so precious to our devotion; and it is our privilege to avenge the crime. You must either pull down the altar and abolish the worship, or you must preserve this sanctuary undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This defendant has been so trusted, has so betrayed; and you ought to make him a more signal example.

"Gentlemen, I am the more disposed to feel the strongest indignation and abhorrence at this odious conduct of the defendant, when I consider the deplorable condition to which he has reduced the plaintiff, and perhaps the still more deplorable one that he has in prospect before him. What a progress has he to travel through before he can attain the peace and tranquillity which he has lost? How like the wounds of the body are those of the mind! How burning

burning the fever! How painful the suppuration, how slow, how hesitating, how relapsing the process to convalescence? Through what a variety of sufferings, what new scenes and changes, must my unhappy client pass, ere he can re-attain, should he ever re-attain, the health of soul of which he has been despoiled by the cold and deliberate machinations of this practised and gilded seducer? If, instead of drawing upon his incalculable wealth for a scanty retribution, you were to stop the progress of his despicable atchievements, by reducing him to actual poverty, you could not, even so, punish him beyond the scope of his offence, nor reprise the plaintiff beyond the measure of his suffering. Let me remind you, that in this action, the law not only empowers you, but that its policy commands you to consider the public example, as well as the individual injury, when you adjust the amount of your verdict: I confess I am most anxious that you should acquit yourselves worthily upon this occasion; I am addressing you as fathers, husbands, brothers; I am anxious that a feeling of these high relations should enter into, and give dignity to your verdict. But I confess it, I feel a tender solicitude when I remember that I am addressing you as my countrymen, as Irishmen, whose characters as jurors, as gentlemen, must find either honor or degradation in the result of your decision. Small as must be that distributive share of national estimation, that can belong to so unimportant an individual as myself, yet I do own that I am tremblingly solicitous for its fate. Perhaps it appears of more value to me, because it is embarked on the same bottom with yours; perhaps the community of peril, of common safety, or common wreck, gives a consequence to my share of the risque, which I could not be vain enough to give it, if it were not raised to it by that mutuality. But why

stoop

stoop to think at all of myself, when I know that you, gentlemen of the jury, when I know that our country itself are clients at this day, and must abide the alternative of honor, or of infamy, as you shall decide. But I will not despond, I will not dare to despond; I have every trust, and hope, and confidence in you. And as to that hope I will add my most fervent prayer to the God of all truth and justice, so to raise and enlighten and fortify your minds, that you may so decide, as to preserve to yourselves while you live, the most delightful of all recollections, that of acting justly, and to transmit to your children the most precious of all inheritance, the memory of your virtue."

The damages were laid at 30,000l.: the jury brought in a verdict of 10,000 l.

Mr. ERSKINE's SPEECH to the Jury, in behalf of JOHN PETRIE, Esq. who was accused of criminal conversation with the wife of Henry Martin, Esq. of Galway, in Ireland.

"Gentlemen of the jury,

"You have heard the plaintiff's case, most ably and most powerfully stated and supported. My learned friend's address to you was affecting, and suitable to the occasion. If I could make any criticism on what has fallen from him, I should be sorry to point out a spot in the sun. Nevertheless I think he seemed to put you too much on your characters. He said, a report had gone forth that it had not been usual in this place to give large damages, thereby leading you with great address, and mixing your wishes with the verdict you are about to pronounce. Such a report, however, I affirm, never has been propagated; and if it had, it would have been founded in malice. The trial by jury, gentlemen, is the glorious bul-

wark of our constitution, and if any thing lifts us above the rest of the world, it is the manner in which special juries are conducted in this country. I am not surprised at the manner in which my learned friend opened his case, at the anxiety he expressed, or at the strenuous manner in which his colleagues supported him. That anxiety certainly originated in the manners of the age. One assertion, however, that he made, has not been proved; viz. the general gallantry of the defendant.

"The manner in which men who fall into this situation endeavour to defend themselves in common, is to represent the behaviour of the husband to be improper, and that the infidelity of the wife originated in an antecedent period to their connection with her. My client, however, commands me to forbear from such a scandalous mode of conduct. He comes before you with the infirmities of human nature hanging about him. He comes, not with that exulting joy which the rich man expressed, when he thanked God that he was unlike the publican; but he comes like the repentant man, mentioned by our Redeemer. He desires me to say, and I will make use of his own words, by which it will be seen how far he is charged with wilful seduction. He says, "Without meaning to impute the present transaction to Mr. Martin's absence, beyond a doubt it was the cause of all our misfortunes. Had he been with her, I could not thus have seen her, nor could we have met so frequently. I desire to call no evidence; and with respect to my fortune, Meff. Truman and Co. my agents, can prove that I am not so rich as is said. All my fortune is vested in Tobago, and from the situation of affairs there, I do not know at this moment I have any fortune at all. Could any sacrifice recal past time, willingly would I make it. Mr. Martin is a man of fortune. 'He does not want large damages; and

and the ends of justice will be answered as well by small. Because, if large are given against me, my innocent children will be involved in my crime, and will be ruined."

Mr. Erskine read the above from his brief.

"Gentlemen, this cause is not marked by atrocious circumstances: there are no violations of friendship; no breaches of hospitality; none of that colouring which died a case, in which I had the honor to be concerned—I mean the action brought by Captain *Barlow* against Mr. *Sykes*.

"Gentlemen, the best security for the honor of a wife, is prudence on the part of a husband. Mrs. Martin was not detained at Paris by any particular business.—The time was eventful; she was in a capital of the greatest luxury; I might also say, of abomination. It is to be lamented that she was allowed to be present at a scene (with the political nature of which, in this country, we have no concern) that was certainly the most improper for a woman whose husband was absent to behold. It is to be lamented that she was not permitted to share in the toils of an election: for in these occurrences *female aid* is often most beneficial; and it is also to be lamented that Mr. Martin did not send some female friend to be her companion. But it may be said that he had such confidence in her, that he could trust her at Paris, surrounded by dissipation, while he was pursuing the paths of ambition in his own country. Alas! would he had known that the moral page presents every where the infirmities and frailties of human nature, sublimed by all the aid of poetry. Would that he had recollected the whole scene between our first parents, so beautifully described by the poet!—Would that he had remembered these lines:

But

But all other doubt possesses me, lest harm
Befal thee, sever'd from thee——
——— leave *not the faithful side*
That gave thee being.
The wife, where danger or dishonor lurks,
Safest and seemliest by her husband stays*.

Had he left Mr. PETRIE there to guard his wife—had he said to him, "You are a countryman, escort my wife to Ireland. To your honor, as a gentleman, I bequeath her," I should have been ashamed to have addressed you. —But Mr. PETRIE never knew the plaintiff, and it is rather remarkable that no evidence has been produced of the commencement of the seduction. I cannot help thinking that the lady hardly deserves the character given her; for in two little months from the departure of her husband, were her affections severed from him—then she receives a letter from him, she turns away in alienation and disgust. In March the plaintiff leaves her; and in June her affections are vanquished, and her honor conquered. You are left to conjecture whether the seduction was committed by her or by the defendant, for no evidence is produced on this point. I have said before, that there have been cases where large damages have been given, but they were replete with atrocious circumstances; this case however has none. You have before you a gentleman who has fallen a sacrifice to a beautiful person, joined to a most refined understanding. This seduction would not have happened if the husband had been there. The moral sense would then have checked the vicious appetite.

"I trust that the learned judge will do me the justice to say, that I do not represent these matters as justifications of the defendant's conduct. Far from it: a letter

* PARADISE LOST. BOOK IX.

has been read, and the defendant has been represented to be a man of management. But this letter, I affirm, cannot increase the damages *one penny*: for would it not have been base in Mr. PETRIE to have suffered the lady to have fallen polluted in the arms of her husband? It would have been impossible, on account of the change in her affections, but that matter sooner or later would have been discovered.

"Gentlemen, in conclusion, I must again observe, that the commencement of the seduction has not been proved in evidence. This circumstance should have its proper weight. My client does not wish that the plaintiff should receive no compensation for the injury he has sustained; he only entreats that you will take the whole of the case into consideration."

SPEECH of the Hon. THOMAS ERSKINE, (now Lord ERSKINE) in defence of the Rev. WILLIAM DAVID SHIPLEY, *Dean of St. Asaph*, for a libel, at the Assizes at *Shrewsbury*, on the 6th of August, 1784.

The defendant was charged in the indictment, (which contained the libel at full length,) with having published a seditious pamphlet, entitled, "The Principles of Government, in a Dialogue between a Gentleman and a Farmer."

"Gentlemen of the Jury,

"My learned and respectable friend (for so upon this, as upon all other occasions, he has approved himself) having informed the court that he means to call no other witnesses to support the prosecution, you are now in possession of the whole of the evidence on which the prosecutor has ventured to charge my reverend friend and client, the dean of Saint Asaph, with a seditious purpose

to

to excite disloyalty and disaffection to the person of his king, and an armed rebellion against the state and the constitution of his country; which evidence is nothing more than his direction to another to publish this dialogue, containing in itself nothing seditious, with an advertisement prefixed to it, containing a solemn protest against all sedition.

"The only difficulty therefore, Gentlemen, which I feel in resisting so false and malevolent an accusation, is to be able to repress the feelings of my mind, excited by its folly and injustice, within those bounds, which leave its faculties their natural and unclouded operations; for I solemnly declare to you, that if he had been indicted as a libeller of our holy religion, only for publishing that the world was made by its Almighty Author, my astonishment could not have been greater than it is at this moment, to see this little book, which I hold in my hand presented by a grand jury of English subjects, as a libel upon the government of England.—Every sentence contained in it, if the interpretation of words is to be settled, not according to fancy, but by the common rules of language, is to be found in the brightest pages of English literature, and in the most sacred volumes of English laws: if any one sentence from the beginning to the end of it be seditious or libellous, the bill of rights' (to use the language of the advertisement prefixed to it) was a seditious libel; the revolution was a wicked rebellion; the existing government is a traiterous conspiracy against the hereditary monarchy of England; and our gracious sovereign, whose title I am persuaded we are all of us prepared to defend with our blood, is an usurper of the crowns of these kingdoms.

"That all these absurd, preposterous, and treasonable conclusions, follow necessarily and unavoidably from a

conclusion *upon this evidence*, that this dialogue is a libel; I follow the example of my learned friend, who has pledged his personal veracity in support of his sentiments, and assert upon *my* honor to be my unaltered, and I believe I may say, unalterable opinion, formed upon the most mature deliberation; and I choose to place that opinion in the very front of my address to you, that you may not, in the course of it, mistake the energies of truth and freedom, for the zeal of professional duty.

"This declaration of my own sentiments, even if my friend had not set me the example by giving you his, I should have thought my duty in this cause; for although, in ordinary cases, where the private right of the party accused is alone in discussion, and no general consequences can follow from the decision, the advocate and the private man ought in sound discretion to be kept asunder, yet there are occasions when such separation would be treachery and meanneſs. In a case where the dearest rights of society are involved in the resistance of a prosecution, where the party accused is (as in this instance) but a mere name; where the whole community is wounded through his sides, and where the conviction of the private individual is the subversion or surrender of public privileges, the advocate has a more extensive charge. The duty of the patriot citizen then mixes itself with his obligation to his client, and he disgraces himself, dishonors his profession, and betrays his country, if he does not step forth in his genuine character, and vindicate the rights of all his fellow citizens, which are attacked through the medium of the man he is defending. Gentlemen, I do not mean to shrink from that responsibility upon this occaſion; I desire to be considered the fellow criminal of the defendant, if by your verdict he should be found one, by publishing in advised

advised speaking (which is substantially equal in guilt to the publication of which he is accused before you) my hearty approbation of every sentiment contained in this little book; promising, here in the face of the world, to publish them upon every suitable occasion, amongst that part of the community within the reach of my precept, influence, and example. If there be any more prosecutors of this denomination abroad among us, they know how to take advantage of these declarations.

"Gentlemen, when I reflect upon the danger which has often attended the liberty of the press in former times, from the arbitrary proceedings of abject, unprincipled, and dependent judges, raised to their situations without abilities or worth, in proportion to their servility to power, I cannot help congratulating both the public, and my client, that you are to try this indictment with the assistance of the learned judge before you; much too instructed in the laws of this land to mislead you by mistake, and I hope too conscientious and independent to misinstruct you by design.

"The days indeed are now, thank God, long past, when, upon trials of this sort, judges and jurymen were constantly pulling in different directions; the court endeavouring to annihilate altogether the province of the jury, and the jury in return listening with disgust, jealousy, and alienation, to the directions of the court. Now they are tried, and I hope ever will be tried, with that harmony which is the beauty of our legal constitution; the jury preserving their independence in judging of that *malus animus*, which is the essence of every crime; but listening to the opinion of the judge upon the evidence, and upon the law, with that respect and attention which dignity, learning, and honest intention in a magistrate, must and ought always to carry along with it.

"Having received my earliest information in my profession from the learned judge himself*, and having daily occasion to observe his able administration of justice, you may believe that I anticipate nothing from the bench unfavorable to my innocent client; and I have experienced his regard in too many instances, not to be sure of every indulgence that is personal to myself.

"These considerations enable me with more freedom to make my address to you upon the merits of this prosecution, in the issue of which your own general rights, as members of a free state, are not less involved than the private rights of the individual I am defending.

"Gentlemen, my reverend friend stands before you under circumstances new and extraordinary; and I might add, *harsh* and *cruel!* For he is not tried in the *forum* where he lives, according to the wise and just provisions of our ancient laws; he is not tried by the vicinage, who, from their knowledge of general character and conduct, were held by our wise and humane ancestors to be the fittest, or rather the only judges of that *malus animus* which is the essence of every crime; he is deprived of that privilege by the arts of the prosecutor, and is called before you, who live in another part of the country, and who, except by vague reputation, are utter strangers to him.

"But the prosecution itself, abandoned by the public, and left in the hands of an obscure individual, is not less extraordinary and unjust, unless as it is a circumstance which palpably refutes the truth of the accusation; for, if this little book be a libel at all, it is a libel upon the state and constitution of the nation, and not upon

Mr. Erskine was for some time one of the judge's pupils, as a special pleader, before he was raised to the bench.

any

any person under the protection of its laws; it attacks the character of no man in this or any other country; and therefore no man is individually or personally injured or offended by it. If it contain matter dangerous or offensive, the state alone can be endangered or offended.

"And are we then reduced to that miserable condition in this country, that, if discontent and sedition be publicly excited amongst the people, the charge of suppressing it devolves upon Mr. JONES? My learned friend, if he would have you believe that this dialogue is seditious, and dangerous, must be driven to acknowledge, that government has grossly neglected its trust; for if, as he says, it has an evident tendency in critical times to stir up alarming commotions, and to procure a reform in the representation of the people by violence and force of arms; and if, as he likewise says, a public prosecution is a proceeding calculated to prevent these probable consequences; what excuse is he prepared to make for that government, which, when according to the evidence of his own witness, an application was made to it for that express purpose, positively and on deliberation refused to prosecute? What will he say for one learned gentleman * who dead is lamented, and for another † who living is honored by the whole profession; both of whom, on the first appearance of this dialogue, were charged with the duty of prosecuting all offenders against the state; yet who not only read it day after day in pamphlets and newspapers, without stirring against the publishers, but who, on receiving it from the lords of the treasury by official reference, opposed a prosecution at the national expence? What will he say of the successors of these gentlemen, who

* Mr. Wallace, then attorney-general.

† Mr. Lee, late attorney, then solicitor-general.

with stating that the affidavit contained no other matter than that there had been published at Wrexham, an extract from Dr. TOWERS's Biography, containing accounts of trials for libels published above a century ago, from which the jurors (if it had fallen in their way) might have been informed of their right to judge their fellow-citizens for crimes affecting their liberties or their lives; a doctrine not often disputed, and never without the vindication of it by the greatest and most illustrious names in the law. But, says this public-spirited prosecutor, if the jury are to try this, I must withdraw my prosecution; for they are men of honor and sense; they know the constitution of their country, and they know the dean of St. Asaph; and I have therefore nothing left but to apply to the judges, suggesting that the minds of the special jury are so prejudiced by being told that they are Englishmen, and as such have the power of acquitting a defendant accused of a crime if they think him innocent, that they are unfit to sit in judgment upon him. Gentlemen, the scheme succeeded: and I was put in my chaise, and wheeled back again with the matter in my pocket which had postponed the trial; matter which was to be found in every shop in London, and which had been equally within the reach of every juryman who had sat upon a jury since the times of king CHARLES the Second.

"Gentlemen, in this manner, above a year ago, Mr. JONES deprived my reverend friend of an honorable acquittal in his own county; and it is a circumstance material in the consideration of this indictment; because, in administering public justice, you will, I am persuaded, watch with jealousy to discover whether public justice is the end and object of the prosecution; and in trying whether my reverend client proceeded *malo animo* in the publication of this dialogue, you will certainly obtain some

some light from examining *quo animo* the prosecutor has arraigned him before you.

"When the indictment was brought down again to trial at the next following assizes, there were no more pamphlets to form a pretext for procrastination. I was surprised, indeed, that they did not employ some of their own party to publish one, and have recourse to the same device which had been so successful before; but this mode either did not strike, or was thought to be but fruitlessly delaying that acquittal which could not be ultimately prevented.

"The prosecutor, therefore, secretly sued out a writ of *Certiorari* from the court of King's Bench, the effect of which was to remove the indictment from the court of Great Sessions in Wales, and to bring it to trial as an English record in an English county. Armed with this secret weapon to defeat the honest and open arm of justice, he appeared at Wrexham, and gave notice of trial; saying to himself, "I will take no notice that I have the king's writ, till I see the complexion of the jury; if I find them men fit for my purpose, either as the prostitutes of power, or as men of little minds, or from their insignificance equally subject to the frown of authority, and the blandishments of corruption, so that I may reasonably look for a sacrifice, instead of a trial, I will then keep the *Certiorari* in my pocket, and the proceedings will of course go forward; but if on the contrary, I find such names as I found before; if the gentlemen of the county are to meet me; I will then, with his majesty's writ in my hand, discharge them from giving that verdict of acquittal, which their understandings would dictate, and their consciences impose."

"Such, without any figure, I may assert to have been the secret language of Mr. JONES to himself, unless he means

means to slander those gentlemen in the face of this court, by saying that the jurors, from whose jurisdiction he by his *Certiorari* withdrew the indictment, were not impartial, intelligent, and independent men; a sentiment which he dares not presume even to whisper, because in public or in private he would be silenced by all who heard it.

"From such a tribunal this public-spirited prosecutor shrunk a second time; and just as I was getting out of my chaise at Wrexham, after another journey from the other side of the island, without even notice of an intention to postpone the trial, he himself in person (his counsel having from a sense of honor and decency refused it) presented the king's writ to the chief justice of Chester, which dismissed the dean for ever from the judgment of his neighbours and countrymen, and which brings him before you to-day.

"What opinion then must the prosecutor entertain of your honor, and your virtues, since he evidently expects from you a verdict, which it is manifest from his conduct he did not venture to hope for from such a jury as I have described to you?

"Gentlemen, I observe an honest indignation rising in all your countenances on the subject, which, with the arts of an advocate, I might easily press into the service of my friend; but as his defence does not require the support of your resentments, or even of those honest prejudices to which liberal minds are but too open without excitation, I shall draw a veil over all that may seduce you from the correctest and the severest judgment.

"Gentlemen, the dean of St. Asaph is indicted by the prosecutor, not for having published this little book; that is not the charge: but he is indicted of publishing a false, scandalous, and malicious libel; and of publishing it (I

am now going to read the very words of the charge) "with a malicious design and intention to diffuse among the subjects of this realm jealousies and suspicions of the king and his government; to create disaffection to his person; to raise seditions and tumults within the kingdom; and to excite his majesty's subjects to attempt, by armed rebellion and violence, to subvert the state and constitution of the nation."

"These are not words of form, but of the very essence of the charge.—The defendant pleads that he is not guilty, and puts himself upon you his country; and it is fit, therefore, that you should be distinctly informed of the effect of a general verdict of guilty on such an issue, before you venture to pronounce it. By such a verdict you do not merely find that the defendant published the paper in question; for if that were the whole scope of such a finding, involving no examination into the merits of the thing published, the term guilty might be wholly inapplicable and unjust, because the publication of that which is not criminal cannot be a crime, and because a man cannot be guilty of publishing that which contains in it nothing which constitutes guilt. This observation is confirmed by the language of the record: for if the verdict of guilty involved no other consideration than the simple fact of publication, the legal term would be, *that the defendant* PUBLISHED, not that he was GUILTY of publishing: yet those who tell you that a general verdict of guilty comprehends nothing more than that the fact of publishing, are forced in the same moment to confess that if you found that fact alone, without applying to it the epithet of *guilty*, no judgment or punishment could follow from your verdict; and they therefore call upon you to pronounce that guilt which they forbid you to examine into, acknowledging, at the same time, that it can be legally pronounced

pronounced by none but you :—a position shocking to conſcience, and inſulting to common ſenſe.

" Indeed, every part of the record expoſes the abſurdity of a verdict of *guilty*, which is not founded on a previous judgment that the matter indicted is a libel, and that the defendant publiſhed it with a criminal intention; for if you pronounce the word *guilty* without meaning to find ſedition in the thing publiſhed, or in the mind of the publiſher, you expoſe to ſhame and puniſhment that innocence which you mean to protect; ſince the inſtant that you ſay the defendant is *guilty*, the gentleman who ſits under my lord is bound by law to record him *guilty in manner and form as he is accuſed*; i. e. guilty of publiſhing a ſeditious libel with a ſeditious intention. And the court above is likewiſe bound to put the ſame conſtruction on your finding. And thus, without enquiry into the only circumſtance which can conſtitute guilt, and without meaning to find the defendant guilty, you may be ſeduced into a judgment which your conſcience may revolt at, and your ſpeech to the world deny; but which the authors of this ſyſtem have reſolved that you cannot explain to the court that is to puniſh the defendant on the authority of your intended verdict of acquittal.

" As a proof that this is the plain and ſimple ſtate of the queſtion, I might venture to aſk the learned judge, what anſwer I ſhould receive from the court of king's bench if you were this day to find the dean of St. Aſaph guilty, but without meaning to find it a libel, or that he publiſhed it with a wicked and ſeditious purpoſe; and I, on the foundation of your wiſhes and opinions, ſhould addreſs myſelf thus to the court when he was called up for judgment.

" My lords, I hope that, in mitigation of my client's puniſhment, you will conſider that he publiſhed it with

perfect innocency of intention, believing, on the highest authorities, that every thing contained in it was agreeable to the laws and constitution of his country; and that your lordships will further recollect that the jury, at the trial, gave no contrary opinion, finding only the fact of publication."

"Gentlemen, if the patience and forbearance of the judges permitted me to get to the conclusion of such an absurd speech, I should hear this sort of language from the court in answer to it: "We are surprised, Mr. ERSKINE, at every thing we have heard from you. You ought to know your profession better, after seven years practice of it, than to hold such a language to the court; you are stopped by the verdict of guilty, from saying he did not publish with a seditious intention; and we cannot listen to the declarations of jurors in contradiction to their recorded judgment."

"Such would be the reception of such a defence; and thus you are asked to deliver over the dean of St. Asaph into the hands of the judges of a court humane and liberal indeed, but who could not betray their oaths, because you had set them the example by betraying yours, and who would therefore be bound to believe him criminal because you had said so on the record, though in violation of your genuine opinions—opinions which, as ministers of the law, they could neither act upon, nor even advert to their existence.

"The conduct of my friend, Mr. BEARCROFT, upon this occasion, who always conducts himself with wisdom and discretion, is a further confirmation of the truth of all these observations: for, if your duty had been confined to the simple question of publication, his address to you would have been nothing more, than that he would call his witnesses to prove the fact that the dean published this paper,

paper, instead of enlarging to you, as he has done with great ability, on the libellous nature of the publication. There is, therefore, a gross inconsistency in his address to you, not from want of his usual precision, but because he is hampered by his good sense in stating an absurd argument, which happens to be necessary for his purpose; for he sets out with saying, that if you shall be of opinion it has no tendency to excite sedition, you must find him not guilty; and ends with telling you, that whether it has or has not such tendency, is a question of law for the court, and foreign to the present consideration.

"It requires, therefore, no other faculty than that of keeping awake, to see through the fallacy of such doctrines; and I shall therefore proceed to lay before you the observations I have made upon this dialogue which you are desired to censure as a libel.

"I have already observed, and it is indeed on all hands admitted, that if this be libellous at all, it is a libel on the public government, and not the slander of any private man.

"Now to constitute a libel upon the government, one of two things appears to me to be absolutely necessary. The publication must either arraign and misrepresent the general principles on which the constitution is founded, with a design to render the people turbulent and discontented under it; or, admitting the good principles of the government in the abstract, must accuse the existing administration with a departure from them.

"Let us try this little pamphlet by these touchstones, and let the defendant stand or fall by the test.

"The beginning of this pamphlet, and indeed the evident and universal scope of it, is to render our happy constitution, and the principles on which it is founded, well understood by all that part of the community which are

are out of the pale of that knowledge by liberal studies and scientific reflections;—a purpose truly public-spirited, and which could not be better effected than by having recourse to familiar comparisons drawn from common life, more suited to the frame of unlettered minds than abstract observations.

"It was this consideration that led Sir William Jones, a gentleman of great learning and excellent principles, to compose this dialogue, and who, immediately after avowing himself the author of it, was appointed by the king to be one of the supreme judges of our Asiatic empire; where, if we reflect on the transactions of its governments, he would hardly have been selected to preside, if his work had been thought seditious.

"Of this I am sure, that his intentions were directly the contrary, and that he thought and felt, as all men of sense must feel and think, that there was no mode so likely to inculcate obedience to government in an Englishman, as to make him well acquainted with its principles; since the English constitution must always be loved, cherished, and revered, exactly in the proportion that it is understood.

"He therefore divested his mind of all those classical refinements which so remarkably characterise it, and composed this simple and natural dialogue between a gentleman and a farmer; in which the gentleman, meaning to illustrate the great principles of public government, by comparing them with the lesser combinations of society, asks the farmer, what is the object of the little club in the village of which he is a member; and if he is a member of it on compulsion, or by his free consent? —If the president is self-appointed, or rules by election? —If he would submit to his taking the money from the box without the vote of the members?—with many other

questions of a similar tendency; and being answered in the negative, he very luminously brings forward the analogy by making the gentleman say to him, "Did it never occur to you that every state is but a great club? or, in other words, that the greater as well as the lesser societies of mankind are held together by social compacts, and that the government of which you are a subject, is not the rod of oppression in the hands of the strongest, but is of your own creation; a voluntary emanation from yourself, and directed to your own advantage?

"Mr. Bearcroft, sensible that this is the just and natural construction of that part of the dialogue, is very desirous to make you believe that the other part of it, touching the reform in the representation of the people in Parliament, has no reference to that context; but is to be connected with all that follows about bearing arms. I must therefore beg your attention to that part of the publication, which will speak plainly for itself.

"The gentleman says to the farmer, on his telling him he had no vote, "Do you know that six men in seven have, like you, no voice in the election of those who make the laws which bind your property and life?" and then asks him to sign a petition which has for its object to render elections co-extensive with the trusts which they repose.

"And is there a man upon the jury who does not feel that all the other advantages of our constitution are lost to us until this salutary object is attained; or who is not ready to applaud every man who seeks to attain it by means that are constitutional?

"But, according to my friend, the means proposed were not constitutional, but rebellious. I will give you his own words, as I took them down: "The gentleman was saying very intelligibly, Sir, I desire you to rebel, to clothe

clothe yourself in armour, for you are cheated of your inheritance. How are you to rectify this? How are you to right yourselves? Learn the Prussian exercise."

"But how does my friend collect these expressions from the words of the passage, which are shortly these: "And the petition which I desired you to sign has only for its object the restoration of your right to chuse your law-makers."

"I confess I am at a loss to conceive how the Prussian exercise finds its way into this sentence. It is a most martial way of describing pen and ink. Cannot a man sign a petition without tossing a firelock? I, who have been a soldier, can do either; but I do not sign my name with a gun.

"There is, beſides, another difficulty in my friend's construction of the sentence; for the object of the petition is the choosing of law-makers. But, according to him, there is to be an end of all law-makers, and of all laws; for neither can exist under the Prussian exercise: and he must be a whimsical scholar who tells a farmer to sign a petition for the improvement of government; his real purpose being to set it upon the die of a rebellion whether there should be any government at all.

"But, let me ask you, gentlemen, whether such strained constructions are to be tolerated in a criminal prosecution, when the simple and natural construction of language falls in directly with the fact: for you cannot but know, that at the time when this dialogue was written, the table of the House of Commons groaned with petitions presented to the house from the most illustrious names and characters representing the most important communities in the nation; not with the threat of the Prussian exercise, but with the prayer of humility and respect to the legislature, that some immediate step

should be taken to avert that ruin which the defect in the representation of the people must sooner or later bring upon this falling empire.

"I do not choose to enter into political discussions here. But we all know, that the calamities which have fallen upon this country have proceeded from that fatal source; and every wise man must be therefore sensible that a reform, if it can be attained without confusion, is a most desirable object.

"But whether it be or be not desirable, is an idle speculation here, because, at all events, the subject has a right to petition for what he thinks beneficial, and however visionary you may think his petition, you cannot deny it to be constitutional and legal; and I may venture to assert, that this dialogue is the first abstract speculative writing which has been attacked as a libel since the revolution; and, from Mr. Bearcroft's admission that the proceeding is not prudent, I may venture to foretel that it will be the last.

"If you pursue this part of the dialogue to the conclusion, the false and unjust construction put upon it becomes more palpable: "Give me your pen," said the farmer, "I never wrote my name, ill as it may be written, with greater eagerness." Upon which the gentleman says, "I applaud you, and trust that your example will be followed by millions." What example?—Arms?—Rebellion?—Disaffection? No! but that others might add their names to the petition which he had advised him to sign, until the voice of the whole nation reached parliament on the subject. That is the plain and obvious construction; and it is not long since that those persons in parliament with whom my friend associates, and with whom he acts, affected at least to hold the voice of the people of England to be the rule and guide of parliament;

and the gentleman in the dialogue knowing that the universal voice of the community could not be wisely neglected by the legislature, only expressed his wish that the petitions should not be partial, but universal.

"With the expression of this wish every thing in the dialogue upon the subject of representation finally closes; and if you will only honour me with your attentions for a few moments longer, I will shew you that the rest of the pamphlet is the most abstract speculation on government to be found in print; and that I was well warranted when I told you some time ago that all its doctrines were to be found in the brightest pages of English learning, and in the most sacred volumes of English laws.

"The subject of the petition being finished, the gentleman says, "Another word before we part. What ought to be the consequence, if the king alone were to insist on making laws, or on altering them at his will and pleasure?" To which the farmer answers, "He too must be expelled." "Oh, but think of his standing army," says the gentleman, "and of the militia which now are his in substance, though ours in form." *Farmer.* "If he were to employ that force against the nation, they would, and ought to resist him, or the state would cease to be a state." And now you will see that I am not contending for things that are wrong; for if this was pointed particularly to excite rebellion against the king of England, and to lead the people to believe that his Majesty was, in the present course of his government, breaking through the laws; and therefore, on the principles of the constitution, was subject to expulsion, I admit that my client ought to be expelled from this and every other community. But is this proved? No! It is not even asserted. I say this in the hearing of a judge deeply learned in the

laws, and who is bound to tell you that there is nothing in the indictment which even charges such an application of the general doctrine. The gentleman who drew it is likewise very learned in his profession; and if he had intended such a charge, he would have followed the rules delivered by the twelve judges in the House of Lords, in the case of the King against Horne, and would have set out with saying, that at the time of publishing the libel in question, there were petitions from all parts of England, desiring a reform in the representation of the people in parliament; and that the defendant knowing this, and intending to stir up rebellion, and to make the people believe that his Majesty was ruling contrary to law, and ought to be expelled, caused to be published the dialogue. This would have been the introduction to such a charge, and then when he came to the words, "He too must be expelled," he would have said by way of innuendo, *meaning thereby to insinuate that the King was governing contrary to law, and ought to be expelled;* which innuendo, though void in itself, without antecedent matter, by way of introduction, when coupled with the introductory averment on the record, would have made the charge compleat. Then I should have known what I had to defend my client against, and should have been prepared with witnesses to shew you the absurdity of supposing that the dean ever imagined, or meant to insinuate, that the king was governing contrary to law. But the penner of the indictment well knowing that you never could have found such an application, and that if it had been averred as the true meaning of the dialogue, the indictment must have fallen to the ground for want of such finding; the innuendo was prudently left out; and yet you are desired by Mr. Bearcroft to take that to be the true construction, which the prosecutor durst not

venture to submit to you by an averment in the indictment, and which not being averred, is not at all before you.

"But if you attend to what follows, you will observe that the writing is purely speculative, comprehending all the modes by which a government may be dissolved; for it is followed with the speculative case of injury to a government from bad ministers, and its constitutional remedy. Says the gentleman, "What if the great accountants and great lawyers of the nation were to abuse their trust, and cruelly injure, instead of faithfully serving the public, what in such case are you to do?" *Farmer.* "We must request the king to remove them, and make trial of others, but none should implicitly be trusted." Request the king to remove them! why, according to Mr. Bearcroft, you had expelled him the moment before.

"Then follows a third speculation of a government dissolved by an aristocracy, the king remaining faithful to his trust: for the gentleman proceeds thus, "But what if a few great lords, or wealthy men, were to keep the king himself in subjection, yet exert his force, lavish his treasure, and misuse his name, so as to domineer over the people and manage the parliament?" Says the farmer, "We must fight for the king and for ourselves." What! for the fugitive king whom the dean of St. Asaph had before expelled from the crown of these kingdoms! Here again the ridicule of Mr. Bearcroft's construction stares you in the face; but taking it as an abstract speculation of the ruin of a state by aristocracy, it is perfectly plain.

"When he first puts the possible case of regal tyranny, he states the remedy of expulsion; when of bad ministers to a good king, the remedy of petition to the throne; and when he supposes the throne to be overpowered by

aristocratic dominion, he then says, "We must fight for the king and for ourselves."

If there had been but one speculation, viz. of regal tyranny, there might have been plausibility at least in Mr. Bearcroft's argument; but when so many different speculations are put, altogether repugnant to and inconsistent with each other, common sense tells every man that the writer is speculative, since no state of facts can suit them all.

"Gentlemen, these observations, striking as they are, must lose much of their force, unless you carry along with you the writing from which they arise; and therefore I am persuaded that you will be permitted to-day to do what juries have been directed by courts to do on the most solemn occasions, i. e. to take the supposed libel with you out of court, and to judge for yourselves whether it be possible for any conscientious or reasonable man to fasten upon it any other interpretation than that which I have laid before you.

"If the dialogue is pursued a little further, it will be seen, that all the exhortations to arms are pointed to the protection of the king's government, and the liberty of the people derived from it. Says the Gentleman, "You talk of fighting as if you were speaking of some rustic engagement; but your quarter staff would avail you little against bayonets." *Farmer.* "We might easily provide ourselves with better arms." "Not so easily," says the Gentleman; "you ought to have a strong firelock." What to do? Look at the context.—For God's sake, do not violate all the rules of grammar by refusing to look at the next antecedent! Take care to have a firelock. For what purpose? "To fight for the king and yourself, in case the king, who is the fountain of legal government, should be kept in subjection by those great and wealthy lords, who might abuse

abuse his authority and insult his title. This, I assert, is not only the genuine and natural construction, but the only legal one it can receive from the court on this record; since in order to charge all this to be not merely speculative and abstract, but pointing to the king and his government, to the expulsion of our gracious sovereign whom my reverend friend respects and loves, and whose government he reverences as much as any man who hears me; there should have been an introduction, that there were such views and intentions in others, and that he knowing it, and intending to improve and foment them, wrote so and so; and then on coming to the words, *that the king must be expelled*, the sense and application should have been pointed by an averment, that he thereby meant to insinuate to the people of England that the present king ought in fact to be expelled; and not speculatively, that under such circumstances it would be lawful to expel a king.

"Gentlemen, if I am well founded in thus asserting, that neither in law nor in fact is there any seditious application of these general principles, there is nothing further left for consideration, than to see whether they be warranted in the abstract;—a discussion hardly necessary under the government of his present Majesty, who holds his crown under the act of settlement made in consequence of the compact between the king and people at the revolution.

"Gentlemen, what part you or I might have taken, if we had lived in the days of the Stuarts, and in the unhappiest of their days which brought on the revolution, is foreign to the present question: Whether we should have been found among those glorious names who from well-directed principle supported that memorable æra, or among those who from mistaken principle opposed it, cannot

cannot affect our judgments to-day: whatever part we may conceive we should or ought to have acted, we are bound by the acts of our ancestors, who determined that there existed an original compact between king and people, who declared that king James had broken it, and who bestowed the crown upon another.

"The principle of that memorable revolution is fully explained in the bill of rights, and forms the most unanswerable vindication of this little book. The misdeeds of king James are drawn up in the preamble to that famous statute; and it is worth your attention that one of the principal charges in the catalogue of his offences is, that he caused several of those subjects (whose right to carry arms is to-day denied by this indictment) to be disarmed in defiance of the laws.

"Our ancestors having stated all the crimes for which they took the crown from the head of their fugitive sovereign, and having placed it on the brows of their deliverer, mark out the conditions on which he is to wear it. They were not to be betrayed by his great qualities, nor even by the gratitude they owed him, to give him an unconditional inheritance in the throne: but enumerating all their ancient privileges, they tell their new king in the body of the law, that while he maintains these privileges, and no longer than he maintains them, *He is King*.

"The same wise caution which marked the acts of the revolution is visible in the act of settlement on the accession of the house of Hanover, by which the crown was again bestowed, upon the strict condition of governing according to law, maintaining the Protestant religion, and not being married to a Papist.

"Under this wholesome entail, *which again vindicates every sentence in this book*, may his Majesty and his posterity hold

hold the crown of these kingdoms for ever!. a wish in which I know I am fervently seconded by my reverend client, and with which I might call the whole county to vouch for the conformity of his conduct.

"But my learned friend, knowing that I was invulnerable here, and afraid to encounter those principles on which his own personal liberty is founded, and on the assertion of which his well-earned character is at stake in the world, says to you with his usual artifice; "Let us admit that there is no sedition in this dialogue, let us suppose it to be all constitutional and legal, yet it may do mischief: why tell the people so?"

"Gentlemen, I am furnished with an answer to this objection, which I hope will satisfy my friend, and put an end to all disputes among us, for upon this head I will give you the opinion of Mr. Locke, the greatest whig that ever lived in this country, and likewise of Lord Bolingbroke, the greatest Tory in it; by which you will see that Whigs and Tories who could never accord in any thing else, were perfectly agreed upon the propriety and virtue of enlightening the people on the subject of government.

"Mr. Locke on this subject speaks out much stronger than the dialogue. He says in his Treatise on Government, "Wherever law ends, tyranny begins; and whoever, in authority, exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject which the law allows not, ceases in that to be a magistrate, and acting without authority may be opposed as any other man who by force invades the rights of another. This is acknowledged in subordinate magistrates. He that hath authority, by a legal warrant, to seize my person *in the street*, may be opposed as a thief and a robber if he endeavours

to

break *into my house* to execute it on me there, although I know he has such a warrant as would have empowered him to arrest me abroad. And why this should not hold in the highest as well as in the most inferior magistrate, I would gladly be informed. For the exceeding the bounds of authority is no more a right in a great than in a petty officer, *in a king* than in *a constable*; but is so much the worse in him, that he has more trust put in him, and more extended evil follows from the abuse of it."

"But then Mr. Locke, knowing that the most excellent doctrines, when they are perverted by wicked men who have their own private objects to lead them to that perversion, or by ignorant men who do not understand them, takes the very objection of my learned friend, Mr. Bearcroft, and puts it as follows into the mouth of his adversary, in order that he may himself answer and expose it: "But there are who say that it lays a foundation for rebellion." Gentlemen, you will do me the honour to attend to this, for one would imagine Mr. Bearcroft had had Mr. Locke in his hand when he was speaking.

"But there are who say that it lays a foundation for rebellion, to tell the people that they are absolved from obedience when illegal attempts are made upon their liberties, and that they may oppose their magistrates when they invade their properties contrary to the trust put in them; and that, therefore, the doctrine is not to be allowed, as libellous, dangerous, and destructive of the peace of the world."

"But that great man instantly answers the objection which he had raised himself in order to destroy it, and truly says, "Such men might as well say, that the people should not be told that honest men may oppose robbers

robbers or pirates, lest it should excite to disorder and bloodshed."

"What reasoning can be more just? for if we were to argue from the possibility that human depravity and folly may turn to evil what is meant for good, all the comforts and blessings which God, the author of indulgent nature, has bestowed upon us, and without which we should neither enjoy nor indeed deserve our existence, would be abolished as pernicious, till we were reduced to the fellowship of beasts.

"The Holy Gospels could not be promulgated; for though they are the foundation of all the moral obligations which unite men together in society, yet the study of them too often conducts weak minds to enthusiasm, madness, or false opinions.

"The use of pistols should be forbid; for, though they are necessary instruments of self-defence, yet men often turn them revengefully upon one another in private quarrels.

"Fire ought to be prohibited; for though under due regulations it is not only a luxury but a necessary of life, yet the dwellings of mankind and whole cities are often laid waste and destroyed by it.

"Medicines and drugs should not be sold promiscuously; for though, in the hands of skilful physicians, they are the kind restoratives of nature, yet they may come to be administered by quacks, and operate as poisons.

"There is nothing, in short, however excellent, which wickedness or folly may not pervert from its intended purpose.

"But if I tell a man, that if he takes my medicine in the agony of disease, it will expel it by the violence of its operation, will it induce him to destroy his constitution by taking it while he is in health? Just so, when a writer

writer speculates on all the ways by which human governments may be dissolved, and points out the remedies which the history of the world furnishes from the experience of former ages; is he, therefore, to be supposed to prognosticate instant dissolution in the existing government, and to stir up sedition and rebellion against it?

"Having given you the sentiments of Mr. Locke, published three years after the accession of king William, who caressed the author, and raised him to the highest trusts in the state, let us look at the sentiments of a Tory, on that subject, still more celebrated both in the republic of letters, and on the theatre of the world: I speak of the great lord Bolingbroke, who was in arms to restore king James to his forfeited throne, and who was anxious to rescue the Jacobites from what he thought a scandal on them, *viz.* That, because from the union of so many human rights centered in the person of king James, they preferred and supported his hereditary title on the footing of our own ancient civil constitutions; that they, therefore, believed in his claim, to govern *jure divino*, independent of the laws.

"This doctrine of passive obedience, which this prosecution seems to assert to be the law, and which certainly is the law, if this dialogue, which denies it, be a libel, was resented above half a century ago by this great writer even in a tract written while an exile in France on account of his treason against the house of Hanover. "The duty of the people," says his lordship, "is now settled upon so clear a foundation, that no man can hesitate how far he is to obey, or doubt upon what occasions he is to resist. Conscience can no longer battle with the understanding: we know that we are to defend the crown with our lives and fortunes, as long as the crown protects

us,

us, and keeps strictly to the bounds within which the laws have confined it. We know likewise, that we are to do it no longer."

"Having finished three volumes of masterly and eloquent discussions on our government, he concludes with stating the duty imposed on every enlightened mind to instruct the people on the principles of our government, in the following animated passage: "The whole tendency of these discourses is to inculcate a rational idea of the nature of our free government into the minds of all my countrymen, and to prevent the fatal consequence of those slavish principles which are industriously propagated through the kingdom, by wicked and designing men. He who labours to blind the people, and to keep them from instruction on those momentous subjects, may be justly suspected of sedition and disaffection; but he who makes it his business to open the understandings of mankind, by laying before them the true principles of their government, cuts up all faction by the roots; for it cannot but interest the people in the preservation of their constitution, when they know its excellence and its wisdom."

"But, says Mr. Bearcroft, again and again, "Are the multitude to be told all this?" I say as often on my part, Yes. I say, that nothing can preserve the government of this free and happy country, in which under the blessing of God we live; nothing can make it endure to all future ages, but its excellence and its wisdom being known not only to you and the higher ranks of men, who may be overborne by a contentious multitude, but by disseminating among the great body of the people the true principles on which it is eſtablished; which shews them that they are not the hewers of wood, and the drawers of water, to men who avail themselves of their

their labour and industry; but that government is a trust proceeding from themselves; an emanation from their own strength; a benefit, and a bleſſing, which has stood the test of ages; that they are governed because they deſire to be governed, and yield a voluntary obedience to the laws because the laws protect them in the liberties they enjoy.

"Upon these principles I assert with men of all denominations and parties, who have written on the subject of free governments, that this dialogue, so far from misrepresenting or endangering the constitution of England, must disseminate obedience and affection to it as far as it reaches; and that the comparison of the great political institutions with the little club in the village, is a deciſive mark of the honest intention of its author.

"Does a man rebel against the president of his club while he fulfils his trust?—No; because he is of his own appointment, and acting for his comfort and benefit. This safe and simple analogy lying within the reach of every understanding, is therefore adopted by the scholar as the vehicle of instruction; and wishing the peasant to be sensible of the happy government of his country, and to be acquainted with the deep stake he has in its preservation, truly tells him, that a nation is but a great club, governed by the same consent, and hanging together by the same voluntary compact; impressing upon his mind the great theory of public freedom, by the most familiar allusions to the little but delightful intercourses of social life, by which men derive those benefits that come home the nearest to their bosoms.

"Such is the wise and innocent scope of this dialogue, which, after it had been repeatedly published without censure, and without mischief, under the public eye of govern-

government in the capital, is gravely supposed to have been circulated by my reverend friend many months afterwards, with a malignant purpose to overturn the monarchy by an armed rebellion.

Gentlemen, if the absurdity of such a conclusion, from the scope of the dialogue itself, were not self-evident, I might render it more glaring by adverting to the condition of the publisher: The affectionate son of a reverend prelate, not more celebrated for his genius and learning than for his warm attachment to the constitution, and in the direct road to the highest honors and emoluments of that very church which, when the monarchy falls, must be buried in its ruins: Nay, the publisher a dignitary of the same church himself at an early period of his life, and connected in friendship with those who have the dearest stakes in the preservation of the government, and who, if it continues, may raise him to all the ambitions of his profession.

I cannot therefore forbear from wishing that somebody, in the happy moments of fancy, would be so obliging as to try at a reason, in compassion to our dulness, why my reverend friend should aim at the destruction of the present establishment; since you cannot but see, that the moment he succeeded, down comes his father's mitre, which leans against the crown, and away goes his own deanery, with all the rest of his livings; neither you nor I have heard any evidence to enable us to guess at what he is looking for in their room.

Yet, in the face of all these absurdities, and without a color of evidence from his character or conduct in any part of his life, he is accused of sedition; and under the false pretence of public justice, dragged out of his own country, deprived of that trial by his neighbours

which is the right of the meanest man who hears me, and arraigned before you, who are strangers to those public virtues which would in themselves be an answer to this malevolent accusation. But when I mark your sensibility and justice in the anxious attention you have bestowed; when I reflect upon your characters, and observe from the panel (though I am personally unknown to you) that you are men of rank in your own country, I know how these circumstances of injustice will operate; and I therefore freely forgive the prosecutor for having fled from his original tribunal.

"Gentlemen, I come now to a point very material for your consideration; on which even my learned friend and I, who are brought here for the express purpose of disagreeing in every thing, can avow no difference of opinion; on which judges of old and of modern times, and lawyers of all interests and parties, have ever agreed; namely, that even if this innocent paper were admitted to be a libel, the publication would not be criminal, if you, the jury, saw reason to believe that it was not published by the Dean with a criminal intention. It is true, that if a paper, containing seditious and libellous matter, be published, the publisher is *prima facie* guilty of sedition, the bad intention being a legal inference from the act of publishing: but it is equally true, that he may rebut that inference, by shewing that he published it innocently.

"This was declared by Lord Mansfield, in the case of the King and Woodfall; where his Lordship said, that the fact of publication would in that instance have constituted guilt, if the paper was a libel; because the defendant had given no evidence to the jury to repel the legal inference of guilt, as arising from the publication; but he said, at the same time, in the words that I shall read to you, that such legal inference was to be repelled by proof.

"There

"'There may be cases where the fact of the publication even of a libel may be justified or excused as lawful or innocent; for no fact which is not criminal, even though the paper be a libel, can amount to a publication of which a defendant ought to be found guilty.'

"I read these words from Burrow's Reports, published under the eye of the Court, and they open to me a decisive defence of the Dean of St. Asaph upon the present occasion, and give you an evident jurisdiction to acquit him, even if the law upon libels were as it is laid down to you by Mr. Bearcroft: for if I shew you, that the publication arose from motives that were innocent, and not seditious, he is not a criminal publisher, even if the Dialogue were a libel, and, according even to Lord Mansfield, ought not to be found guilty.

"The Dean of St. Asaph was one of a great many respectable gentlemen who, impressed with the dangers impending over the public credit of the nation, exhausted by a long war, and oppressed with grievous taxes, formed themselves into a committee, according to the example of other counties, to petition the legislature to observe great caution in the expenditure of the public money. This Dialogue being written by Sir William Jones, a near relation of the Dean by marriage, was either sent, or found its way to him in the course of public circulation. He knew the character of the author; he had no reason to suspect him of sedition or disaffection; and saw and believed it to be, what I at this hour believe, and have represented it to you, a plain, easy manner of shewing the people the great interest they had in petitioning Parliament for every thing beneficial to the public. It was accordingly the opinion of the Flintshire Committee, and not particularly of the Dean, as an individual, that the Dialogue should be translated into Welsh, and published.

It was accordingly delivered, at the desire of the Committee, to a Mr. Jones, for the purpose of translation. This gentleman, who will be called as a witness, told the Dean a few days afterwards, that there were persons, not indeed from their real sentiments, but from spleen and opposition, who represented it as likely to do mischief, from ignorance and misconception, if translated and circulated in Wales.

"Now, what would have been the language of the defendant upon this information, if his purpose had been that which is charged upon him in the indictment? He would have said, 'If what you tell me is well founded, *hasten the publication*; my object is sedition; my plan is, that there may be rebellion in Wales; I am sure I shall never raise one here, by the dissemination of such a pamphlet in English: therefore let it be instantly translated, if the ignorant inhabitants of the mountains are likely to collect from it that it is time to take up arms.'

"But Mr. Jones will tell you, that, on the contrary, the instant he suggested that such an idea, absurd and unfounded as he felt it, had presented itself from any motives to the mind of any man, the Dean, impressed as he was with its innocence and its safety, instantly acquiesced, and recalled, even on his own authority, the intended publication by the Committee; and it never was translated into the Welsh tongue at all, nor circulated amongst that multitude, which Mr. Bearcroft is so desirous of keeping in darkness; as if obedience to free Government, like bigotry to priestcraft, was to be upheld by ignorance and delusion.

"And here the Dean's connexion with this Dialogue would have ended, if Mr. Fitzmaurice, who never lost any occasion of defaming and misrepresenting him, had not thought fit, near three months after the idea of translation

translation was abandoned, to reprobate and condemn the Dean's conduct at the public meetings of the county, in the severest terms, for his former intention of circulating the Dialogue in Welsh; declaring that its doctrines were *seditious, treasonable, and repugnant to the principles of our Government.*

"It was upon this occasion that the Dean, naturally anxious to redeem his character from the unjust aspersions of having intended to undermine the constitution of his country; conscious that the epithets applied to the Dialogue were false and unfounded; and thinking that the production of it would be the most decisive refutation of the groundless calumny cast upon him, directed a few English copies of it to be published in vindication of his former opinions and intentions, prefixing an advertisement to it which plainly marks the spirit in which he published it. For he there complains of the injurious misrepresentations I have adverted to, and impressed with the sincerest conviction of the innocence, or rather the merit, of the Dialogue, makes his appeal to the friends of the Revolution in his justification."

[*Mr. Erskine here read the Advertisement to the Jury, as prefixed to the Dialogue.*]

"Now, Gentlemen, if you shall believe upon the evidence of the witness whom I shall bring before you, and of the advertisement prefixed to the publication itself, (which is artfully kept back, and forms no part of the indictment,) that the Dean, upon the authority of Sir William Jones who wrote it, and of the other great writers on the principles of our Government, and of the history of the country itself, really thought the Dialogue innocent and meritorious, and that his single purpose in publishing was the vindication of his character from sedition; then he is not guilty of this indictment, which charges the publica-

tion with a wicked intent to excite disaffection to the King, and rebellion against his Government.

"*Actus non facit reum nisi mens sit rea*, is the great maxim of penal justice, and stands at the top of the criminal page, in every volume of our humane and sensible laws. The hostile mind is the crime which it is your duty to decypher; and I am sure you will discharge it with the charity of christians; refusing to adopt a harsh and cruel construction, when one that is fair and honorable is more reconcileable, not only with all probabilities, but with that evidence which you are sworn to make the foundation of your verdict. For the prosecutor rests on the single fact of publication, without the advertisement, and without being able to cast an imputation upon the defendant's conduct; or even in observation to assign a motive to give verisimilitude to the charge.

"I shall, on the other hand, shew you that this sower of sedition has been lately honored with the public thanks of the county in which he lives, for his constitutional independent conduct; and shall bring before you the highest characters that inhabit it, to prove the anxiety which, in every part of his life, he has manifested for the public, and the zeal with which, in stations both religious and civil, he has served it.

"Gentlemen, after the length of time which, very contrary to my inclination, I have detained you, I am sure you will be happy to hear that there is but one other point to which my duty obliges me to direct your attention.

"I should, perhaps, have said nothing more concerning that particular province which belongs to you as a jury, upon this occasion, than the little I touched upon it at the beginning, if my friend Mr. Bearcroft had not compelled me to it, by drawing a line around you, saying

ing (I hope with the same effect that king Canute said to the sea), "Thus far shalt thou go." But since he has thought proper to coop you in, it is my business to let you out: and to give the greater weight to what I am about to say to you, I have no objection that every thing which I may utter shall be considered as proceeding from my own private opinions; and that not only my professional character, but my more valuable reputation as a man, and a member of society, may stand or fall by the principles which I shall lay down for the regulation of your judgments.

"This is certainly a bold thing for me to say, since what I am about to deliver may clash in some degree, *though certainly it will not throughout*, with the decision of a great and reverend judge who has administered the justice of this country for above half a century with singular advantage to the public, and distinguished reputation to himself; but whose extraordinary faculties and general integrity, which I should be lost to all sensibility and justice if I did not acknowledge with reverence and affection, could not protect him from much obloquy when he appeared as the supporter of those doctrines which I am about to controvert. I shall certainly never join in the calumny that followed them, because I believe he acted upon that, as upon all other occasions, with the strictest integrity; an admission which it is my duty to make, which I render with great satisfaction, and which proves nothing more than that the greatest of men are fallible in their judgments, and warns us to judge from the essences of things, and not from the authority of names, however imposing.

"Gentlemen, the opinion I allude to is, that *libel or not libel* is a question of law for the judge, your jurisdiction being confined to the fact of publication. And if

this was all that was meant by the position (though I could never admit it to be consonant with reason or law), it would not affect me in the present instance, since all that it would amount to would be, that my lord, and not you, would deliver that opinion, which would guide the present verdict. But what I am afraid of upon this occasion is, that neither of you are to give it; for so my friend has expressly put it. 'My lord,' says he, 'will probably not give you his opinion whether it be a libel or not, because, as he will tell you, it is a question open upon the record; and that if Mr. Erskine thinks the publication innocent, he may move to arrest the judgment.' Now this is just the most artful and the most mortal stab that can be given to justice, and to my innocent client. All I wish is his lordship's judgment to guide yours in determining whether this pamphlet be or be not a libel; because, knowing the scope of his understanding and professional ability, I have a moral certainty that his opinion would be favorable. If therefore libel or no libel be a question of law, as is asserted by Mr. Bearcroft, I call for his lordship's judgment upon that question, according to the regular course of all trials where the law and the fact are blended; in all which cases the notorious office of the judge is to instruct the consciences of the jury to draw a correct legal conclusion from the facts in evidence before them. A jury are no more bound to return a special verdict in cases of libel, than upon other trials, criminal and civil, where law is mixed with fact; but are to find generally upon both, receiving, as they constantly do receive in every court at Westminster, the opinion of the judge both on the evidence and the law.

"Say the contrary who will, I assert this to be the genuine, unrepealed constitution of England; and therefore

fore if the learned judge shall tell you that this pamphlet is in the abstract a libel; though I shall not agree that you are therefore bound to find the defendant guilty unless you think so likewise, yet I shall certainly think that it ought to have very great weight with you, and that you should not rashly, and without great consideration, go against it. But, if you are only to find the fact of publishing, which is not even disputed; and the judge is to tell you, that the matter being on the record, he shall shut himself up in silence, and give no opinion at all as to the libellous and seditious tendency of the paper, and yet shall nevertheless expect you to affix the epithet of guilty to the publication of a thing the guilt of which you are forbid, and he refuses to examine; miserable indeed is the condition into which we are fallen! for if you, following such directions, bring in a verdict of guilty, without finding the publication a libel, or the publisher seditious; and I afterwards, in mitigation of punishment, apply to that humanity and mercy which is never deaf when it can be addressed consistently with the law; I shall be told in the language I before put in the mouths of the judges, 'You are estopped, Sir, by the verdict: we cannot hear you say your client was mistaken, but not guilty; for, had that been the opinion of the jury, they had a jurisdiction to acquit him.'

"Such is the way in which the liberties of Englishmen are by this new doctrine to be shuffled about from jury to court, without having any solid foundation to rest on.

"Gentlemen, I call this the effect of new doctrines, because I do not find them supported by that current of ancient precedents which constitutes English law. The history of seditious libels is perhaps one of the most interesting subjects which can agitate a court of justice, and

and my friend thought it prudent to touch but very slightly upon it.

"We all know, that by the immemorial usage of this country, no man in a criminal case could ever be compelled to plead a special plea;—for although our ancestors settled an accurate boundary between law and fact, obliging the party defendant who could not deny the latter to shew his justification to the court; yet a man accused of a crime had always a right to throw himself by a general plea upon the justice of his peers; and on such general issue, his evidence to the jury might be ever as broad and general as if he had pleaded a special justification. The reason of this distinction is obvious.

"The rights of property depend upon various intricate rules, which require much learning to adjust, and much precision to give them stability; but crimes consist wholly in intention; and of that which passes in the breast of an Englishman as the motives of his actions, none but an English jury shall judge.—It is therefore impossible, in most criminal cases, to separate law from fact; and consequently whether a writing be or be not a libel, never can be an abstract legal question for judges. And this position is proved by the immemorial practice of courts, the forms of which are founded in legal reason: for that very libel over which it seems you are not to entertain any jurisdiction, is always read, and often delivered to you out of court for your consideration.

"The administration of criminal justice in the hands of the people, is the basis of all freedom. While that remains there can be no tyranny, because the people will not execute tyrannical laws on themselves. Whenever it is lost, liberty must fall along with it, because the sword of justice falls into the hands of men, who, how-

ever independent, have no common interest with the mass of the people.

"Our whole history is therefore chequered with the struggle of our ancestors to maintain this important privilege, which in cases of libel has been too often a shameful and disgraceful subject of controversy. For the ancient government of this country not being founded (like the modern) upon that knowledge which the people have of its excellence, but supported by ancient superstitions, and the lash of power, it is no wonder that it saw the seeds of its destruction in a free press.

"Printing, therefore, upon the revival of letters, when the lights of philosophy led to the detection of these prescriptive usurpations, was considered as a matter of state, and subjected to the control of licencers appointed by the crown: and although our ancestors had stipulated by Magna Charta, that no freeman should be judged but by his peers, the courts of star chamber and high commission, consisting of privy counsellors erected during pleasure, opposed themselves to that freedom of conscience and civil opinion, which even then were laying the foundations of the revolution.

"Whoever wrote on the principles of government was pilloried in the star chamber, and whoever exposed the errors of a false religion was persecuted by the commission court.

"But no power can supersede the privileges of men in society, when once the lights of science have arisen amongst them. The prerogatives which former princes exercised with safety, and even with popularity, were not to be tolerated in the days of the first Charles, and our ancestors insisted that these arbitrary tribunals should be abolished. Why did they insist upon that abolition? Was it that the question of libel, which was their principal

cipal jurisdiction, should be determined only by the judges at Westminster?—In the present times, even such a reform, though very defective, might be consistent with reason, because the judges are now free, honorable, independent, and sagacious men; but in those days they were wretches; libels upon all judicature; and instead of admiring the wisdom of our ancestors, if that had been their policy, I should have held them up as lunatics, to the scoff of posterity; since in the times when these unconstitutional tribunals were supplanted, the courts at Westminster-hall were filled with judges equally the tools of power as those in the star chamber; and the whole policy of the change consisted in that principle, which was then never disputed, *viz.* that the judges at Westminster in criminal cases were but a part of the court, and could only administer justice through the medium of a jury.

"When the people, by the aid of an upright parliament, had thus succeeded in reviving the constitutional trial by the country, the next course taken by the ministers of the crown, was to pollute what they could not destroy: sheriffs devoted to power were appointed, and corrupt juries packed to sacrifice the rights of their fellow-citizens, under the mask of a popular trial. This was practised by Charles the second; and was made one of the charges against king James, for which he was expelled the kingdom.

"When juries could not be found to their minds, judges were daring enough to brow-beat juries, and to dictate to them what they called the law; and in Charles the second's time an attempt was made, which, if it had proved successful, would have been decisive.

"In the year 1670, PENN and MEAD, two quakers being indicted for *seditiously* preaching to a multitude *tumultuously*

tuously assembled in Gracechurch-street, were tried before the recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that, as to whether the matter or the intention of their preaching were seditious, these were questions of law and not of fact, which they were to keep to at their peril.

"The jury, after some debate, found PENN guilty of speaking to people in Gracechurch-street; and on the recorder's telling them that they meant, no doubt, that he was speaking to a *tumult* of people there; he was informed by the foreman, that they allowed of no such words in their finding, but adhered to their former verdict. The recorder refused to receive it, and desired them to withdraw, on which they again retired, and brought in a general verdict of acquittal; which the court considering as a contempt, set a fine of forty marks upon each of them, and to lie in prison till paid. Edward Bushel, one of the jurors (to whom we are almost as much indebted as to Mr. Hampden, who brought the case of ship-money before the court of exchequer) refused to pay his fine, and, being imprisoned in consequence of the refusal, sued out his writ of Habeas Corpus, which, with the cause of his commitment (*viz. his refusing to find according to the direction of the court in matter of law*), was returned by the sheriffs of London to the court of common pleas; when lord chief justice VAUGHAN, to his immortal honor, addressed himself thus:

"We must take off this veil and color of words, which make a shew of being something, but are in fact nothing. If the meaning of these words, *finding against the direction of the court in matter of law*, be, that if the judge, having heard the evidence given in court (for he knows no other), shall tell the jury upon this evidence, that the law is for the

the crown, and they, under the pain of fine and imprisonment, are to find accordingly; every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and therefore the trials by them may be better abolished than continued; which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country.'

"He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment.

"This determination of the right of juries to find a general verdict was never afterwards questioned by succeeding judges; not even in the great case of the seven bishops, on which the dispensing power and the personal fate of king JAMES himself in a great measure depended.

"These conscientious prelates were, you know, imprisoned in the tower, and prosecuted by information for having petitioned king JAMES the second to be excused from reading in their churches the declaration of indulgence which he had published contrary to law. The trial was had at the bar of the court of king's-bench, when the attorney general of that day, rather more peremptorily than my learned friend (who is much better qualified for that office, and whom I should be glad to see in it), told the jury, that they had nothing to do but with the bare fact of publication, and said he should therefore make no answer to the arguments of the bishop's counsel, as to whether the petition was or was not a libel. But chief justice WRIGHT (no friend to the liberty of the subject, and with whom I should be as much ashamed to compare my lord as Mr. Bearcroft to that attorney-general) interrupted him, and said, 'Yes, Mr.

Mr. Attorney, I will tell you what they offer, which it will lie upon you to answer: they would have you shew the jury how this petition had disturbed the government, or diminished the king's authority.' So say I. I would have Mr. BEARCROFT shew you, gentlemen, how this dialogue has disturbed the king's government, exciting disloyalty and disaffection to his person, and stirred up disorders within these kingdoms.

"In the case of the bishops, Mr. Justice POWELL followed the chief justice, saying to the jury, 'I have given my opinion; *but the whole matter is before you, gentlemen, and you will judge of it.*' Nor was it withdrawn from their judgment; for although the majority of the court were of opinion that it was a libel, and had so publicly declared themselves from the bench, yet by the unanimous judgment of all the judges, after the court's own opinion had been pronounced by way of charge to the jury, the petition itself, which contained no innuendos to be filled up as facts, was delivered into their hands to be carried out of court, for their deliberation. The jury accordingly withdrew from the bar, carrying the libel with them; and (puzzled, I suppose, by the infamous opinions of the judges) were most of the night in deliberation; all London surrounding the court with anxious expectation for that verdict, which was to decide whether Englishmen were to be freemen or slaves. Gentlemen, the decision was in favor of freedom, for the reverend fathers were acquitted; and though acquitted in direct opposition to the judgment of the court, yet it never occurred even to these arbitrary men who presided in it to cast upon them a censure or a frown.

"This memorable and never-to-be-forgotten trial is a striking monument of the importance of these rights, which

which no juror should ever surrender; for if the legality of the petition had been referred as a question of law to the court of king's bench, the bishops would have been sent back to the tower, the dispensing power would have acquired new strength, and perhaps the glorious æra of the revolution and our present happy constitution had been lost.

"Gentlemen, I ought not to leave the subject of these doctrines, which in the libels of a few years past were imputed to the noble earl of whom I formerly spoke, without acknowledging that lord MANSFIELD was neither the original author of them, nor the copier of them from these impure sources: it is my duty to say, that lord chief justice LEE, in the case of the KING against OWEN, had recently laid down the same opinions before him. But then both of these great judges always conducted themselves on trials of this sort, as the learned judge conducts himself to day; considering the jury as open to all the arguments of the defendant's counsel. And particularly in the case of OWEN, who was acquitted against the direction of the court, the present lord CAMDEN addressed the jury, not as I am addressing you, but with all the eloquence for which he is so justly celebrated in the world.

"The practice, therefore, of these great judges is a sufficient answer to their opinions; for if it be the law of England, that the jury may not decide on the question of libel, the same law ought to extend its authority to prevent their being told by counsel that they may.

"There is indeed no end of the absurdities which such a doctrine involves; for, suppose that this prosecutor, instead of indicting my reverend friend for publishing this dialogue, had indicted him for publishing the Bible, beginning at the first book of Genesis, and ending at the

end of the revelations, without the addition or substraction of a letter, and without an *innuendo* to point a libellous application, only putting in at the beginning of the indictment, that he published it with a blasphemous intention:—On the trial for such a publication, Mr. BEARCROFT would gravely say, "Gentlemen of the jury, you must certainly find by your verdict, that the defendant is guilty of this indictment, *i. e.* guilty of publishing the Bible with the intentions charged by it. To be sure, every body will laugh when they hear it, and the conviction can do him no possible harm; for the court of king's bench will determine that it is not a libel, and he will be discharged from the consequences of the verdict."

"Gentlemen, I defy the most ingenious man living to make a distinction between that case and the present; and in this way you are desired to sport with your oaths, by pronouncing my reverend friend to be a criminal, without either determining yourselves, or hearing a determination, or even an insinuation from the judge that any crime has been committed; following strictly that famous and respectable precedent of Rhadamanthus, judge of hell, who punishes first, and afterwards institutes an enquiry into the guilt.

"But it seems your verdict would be no punishment, if judgment on it was afterwards arrested. I am sure, if I thought the dean so lost to sensibility as to feel it no punishment, he should find another counsel to defend him. But I know his nature better. I know that, conscious as he is of his own purity, he would leave this court hanging down his head in sorrow, if he was held out by your verdict a seditious subject, and a disturber of the peace of his country; and that he would feel the arrest of judgment, which would follow in the term upon his formal appearance in court as a criminal, to be a cruel

insult upon his innocence, rather than a triumph over the unjust prosecutors of his pretended guilt.

"Let me therefore conclude with reminding you, gentlemen, that if you find the defendant guilty, not believing that the thing published is a libel, or that the intention of the publisher was seditious, your verdict and your opinion will be at variance, and it will then lie between God and your own consciences to reconcile the contradiction.

"As the friend of my client, and the friend of my country, I shall feel much sorrow, and you yourselves will probably hereafter regret it, when the season of reparation is fled. But why should I indulge such unpleasant apprehensions, when in reality I fear nothing? I know it is impossible for English gentlemen, sitting in the place you do, to pronounce this to be a seditious paper; much less, upon the bare fact of publication, explained by the prefixed advertisement, and the defendant's general character and deportment, to give credit to that seditious purpose which is necessary to convert the publication even of a libel itself into a crime.

"I beg pardon of my lord, and of you, gentlemen, for the long time I have trespassed upon your indulgent and patient attention: nothing, indeed, but the duty I owe my client could have induced me to do it, after the fatigue I have sustained in a very long journey to appear before you."——Verdict "Guilty of publishing—but whether a libel or not the jury do not find."

SPEECH of JOHN PHILPOT CURRAN, Esq. in defence of LADY PAMELA FITZGERALD and her infant children, at the bar of the HOUSE of COMMONS in IRELAND.

LORD EDWARD FITZGERALD having died in prison before trial, of the wound he received in resisting the person who apprehended him; a bill was brought into parliament to attaint him after his death; Mr. CURRAN was heard at the bar of the house of commons, against the bill as counsel for the widow and infant children of that nobleman, (the eldest of whom was only four years old,) on which occasion Mr. CURRAN delivered the following speech. Mr. CURRAN said, "He rose in support of a petition presented on behalf of LORD HENRY FITZGERALD, brother of the deceased LORD EDWARD FITZGERALD, of PAMELA his widow, EDWARD, his only son and heir, of the age of four years, PAMELA his eldest daughter, of the age of two years, and LUCY his youngest child of the age of three months; against the bill of attainder then before the committee. The bill of attainder" he said, "had formed the subject into two parts. It asserted the fact of the late LORD EDWARD's treason, and secondly it purported to attaint him, and to vest his property in the crown; he would follow the same order: as to the first bill, he could not but remark upon the strange looseness of the allegation; the bill stated that he had during his life, and since the first of November last, committed several acts of high treason. Without stating what, or when, or where, or with whom; it then affected to state the different species of treason, of which he had been guilty, namely, conspiring to levy war and endeavouring to persuade the enemies of the king to invade the country, the latter allegation was not attempted to be

proved! the conspiring to levy, without actually levying was clearly no high treason, and had been repeatedly so determined before this previous and important question, namely, the guilt of lord EDWARD, (and without the full proof of which no punishment can be just). He had been asked by the committee, if he had any defence to go into? he was confounded by a question which he could not answer; but upon a very little reflection he saw in that very confusion the most conclusive proof of the injustice of the bill. For what," he said, "can be more flagrantly unjust, than to inquire into a fact, of the truth or falsehood of which no human being can have knowledge, save the informer who comes forward to assert it. Sir," said he, "I now answer the question. I have no defensive evidence. I have no case! it is impossible I should, I have often of late gone to the dungeon of the captive; but never have I gone to the grave of the dead to receive instructions for his defence—nor in truth have I ever before been at the trial of a dead man! I offer therefore no evidence upon this inquiry. Against the *perilous example* of which, I do protest in behalf of the *public*, and against the *cruelty* and *injustice* of which I do protest in the name of the *dead father*, whose memory is *sought* to be *dishonored*, and of his *infant orphans*, whose bread is *sought* to be taken away. Some observations, and but a few upon the assertions of REYNOLDS, I will make, (Mr. CURRAN then observed upon the credit of REYNOLDS by his own confession): I do believe him in that instance, even though I have heard him assert it upon his oath, by his own confession, an informer, and a bribed informer; a man whom several respectable witnesses had sworn in a court of justice upon their oaths, not to be credible on his oath—a man upon whose single testimony, no jury ever did, nor ever ought to pronounce a verdict of guilty. A

kind of man to whom the law resorts with *abhorrence*, and from necessity, in order to set the criminal against the crime; but who is made use of by the law upon the same reason that the *most noxious* poisons are resorted to in medicine. If such the man, look for a moment at his story; he confines himself to mere conversation only, with a dead man. He ventures not to introduce any third person, living or even dead! he ventures to state no act whatever done, he wishes indeed to asperse the conduct of lady EDWARD FITZGERALD, but he well knows, that even were she in the country, she could not be adduced as a witness to disprove him.

"See, therefore, if there can be any one assertion to which credit can be given, except this, that he has sworn, and forsworn, that he is a traitor, that he has received five hundred guineas to be an informer, and that his general reputation is to be entirely *unworthy* of *credit*.

"As to the papers, it was sufficient to say, that no one of them, nor even all of them, were ever asserted to contain any positive proof against lord EDWARD; that the utmost that could be deduced from them, was nothing more than doubt and conjecture; which, had lord EDWARD been living, might have been easily explained—to explain which was now impossible: and upon which to found a sentence of guilt would be contrary to every rule of justice or humanity.

"He would therefore pass to the second question: was this bill of attainder warranted by the principles of reason? the principles of forfeiture in the laws of treason, or the usage of parliament in bills of attainder? The subject was of necessity very long, it had nothing to attract attention, but—much to repel it. But he trusted that the anxiety of the committee for justice, notwithstanding any dulness either in the subject or the speaker, would

secure to him their attention." Mr. CURRAN then went into a minute detail of the principles of the law of forfeiture for high treason. "The laws of the Persians, and Macedonians, extended the punishment of the traitor to the extinction of all his kindred. That law subjected the property and life of every man to the most complicated despotism, because the loyalty of every individual of his kindred was a matter of wild caprice, as the will of the most arbitrary despot could be.

"This principle was never adopted in any period of our law; at the earliest times of the Saxons, the law of treason acted directly only on the person of the criminal, it took away from him what he actually had to forfeit, his life and property. But as to his children, the law disclaimed to affect them directly; they suffered, but they suffered by a necessary consequence of their father's punishment, which the law could not prevent, and never directly intended. It took away the inheritance, because the criminal at the time of taking it away, had absolute dominion over it, and might himself have conveyed it away from his family. This, he said, was proved by the instances of conditional fees at the common law, and estates intail since the last statute *De Donis*. In the former case, the tenant did not forfeit, until he had acquired an absolute dominion over the estate by the performance of the condition. Neither in the latter case was the estate tail made forfeitable, until the tenant intail had become enabled in two ways to obtain the absolute dominion by a common recovery, or by a fine. Until then the issue intail, though not only the children of the tenant, but taking from his estate by descent, could not be disinherited by his crime. A decisive proof that even the early law of treason never intended to extend the punishment of the traitor to his children as such, but even this

direct punishment upon the traitor himself was to take effect, only upon a condition suggested by the unalterable rules of natural justice, namely a judgment proceeded upon conviction, against which he might have made his defence, or upon an outlawry, where he refused to abide his trial. In that case he was punished, because during his life the fact was treable, because during his life the punishment could act directly upon his person; because during his life the estate was his to convey, and therefore his to forfeit.

"But if he died without attainder, a fair trial was impossible, because a fair defence was impossible, a direct punishment upon his person was impossible, because he could not feel it, and a confiscation of his estate was equally impossible, because it was then no longer his, but was then vested in his heir, to whom it belonged by a title as good as that by which it had ever belonged to him in his life time, namely the known law of the country.

"As to a posthumous forfeiture of lands, that appears to have been attempted by inquest after death. But so early as the eighth of EDWARD the third, the legality of such presentments was disallowed by the judges. And there is no lawyer at this day, who can venture to deny that since the twenty-fifth and thirty-fourth of EDWARD the third, no estate of inheritance can regularly be forfeited save his attainder in the life of the party; therefore the law of the country being that unless the descent was intercepted by an actual attainder in the life time of the criminal, it became vested in the heir. The moment it did descend, the heir became seised by the title the most favored in law. He might perhaps be considered as a purchaser for the most valuable consideration, his mother's marriage, of which he was the issue. Why there-

fore was posthumous attainder excluded from the protective law of treason? Why has it never since been enacted by a prospective law? Clearly for this reason! that in its own nature it is inhuman, impolitic and unjust.

"But it is said, that this may be done by a bill of attainder, that the parliament is omnipotent and therefore may do it, and that it is a proceeding familiar to our constitution. As to the first, it could not be denied that the parliament was in the power of the country, but an argument from the existence of a power to the exercise of it in any particular instance, is ridiculous and absurd. From such an argument it would follow, that it must do whatever it is able to do; and that it must be stript of the best of all power, the power of abstaining from what is wrong."

Mr. CURRAN then endeavored to shew that such a bill ought not to pass; "first, because every argument against the justice or policy of a prospective was tenfold strong against a retrospective law. Because every *ex post facto* law, was in itself an exercise of despotical power; that when it altered the law of property it was peculiarly dangerous; that when it punished the innocent for the guilty it was peculiarly unjust: that when it affected to do that which the criminal law as it then stood could not do, it acted peculiarly against the spirit; of the constitution: which was to contract and restrain penal law by the strictest construction, and not to add to it by vindictive innovation. But he said, he was warranted to go much farther upon the authority of the British legislature itself, and to say that the principle of forfeiture, even in the prospective law, was altogether repugnant to the spirit of the British constitution.

"The statutes of ANNE and GEORGE the second have declared that after the death of the Pretender and of his sons,

sons, no such forfeiture ought or should exist, the favor of that high authority, every philosophical and theoretical writer, baron MONTESQUIEU, the marquis of BECCARI, and many others might be cited. Against it, no one writer of credit or character, that had come to his hands. Of the late Mr. YORKE, he did not mean to speak with disrespect, he was certainly a man of learning and genius, but it must be observed he wrote for a party and for a purpose; he wrote against a repeal of the law of forfeiture more than for its principle; of that principle he expressly declined entering into a direct defence, but for extending that principle further than it is already law, the slightest misconstruction cannot be found in his treatise.

"But," said Mr. CURRAN, "it is asserted to be the usage of the constitution in both countries;—of bills of attainder, he said, the instances were certainly many, and most numerous in the worst times, and rising above each other in violence and injustice. The most tolerable of these was, that which attainted the man who fled from justice, which gave him a day to appear, had he chosen to do so, and operated as a legislative outlawry, that kind of act had been passed, though but rarely within the present century, there have been many acts of attainder when the party was willing but not permitted to appear and take his trial. In these two kinds of bills of attainder, however, it is to be observed, that they do not any violence to the common law, by the declaring of a new crime, or a new punishment, but only by creating a new jurisdiction and order of proceeding. Of the same kind that has been mentioned, many instances are to be found in the violent reigns of the PLANTAGENETS and the TUDORS, and many of them revised by the wisdom of cooler and juster times.

Of

Of such unhappy monuments of human frailty lord COKE said, *auferat oblivio si non silentium tegat.*

"I beg leave," said Mr. CURRAN, "to differ in that from the learned judge; I say let the record upon which they are written be indelible, and immortal. I say, let the memory that preserves them have a thousand tongues to tell them; and when justice even late and slow, shall have robbed their fellow principle of life, let them be interred in a monument of negative instruction to posterity for ever.

"A third kind of bill of attainder might be found, which for the first time disclosed the law, and attainted the criminal upon it, such was the attainder of STRAFFORD. A fourth which did not change the law as to the crime, but as to the evidence upon which it was to be proved, such was the attainder of Sir JOHN FENWICK. Of these two last species of attainder no lawyer has ever spoken with respect. They were the cruel effect of rancor and of party spirit, nor could any thing be said in their excuse except that they were made for the direct punishment of the actual criminals, and whilst they were yet living. The only other attainder that remained possible to be added to this catalogue, was that of a bill like to the present, which affects to try after the party's death, when trial is impossible; to punish guilt when punishment was impossible: to inflict punishment where crime is not even pretended.

"To change the settled law of property, to confiscate the widow's pittance! to plunder the orphan's cradle! and to violate the religion of the dead man's grave! for this too there was a precedent, but for the honor of humanity, let it be remembered that an *hundred and forty years* had elapsed, in which that precedent had not been thought worthy of imitation in Great Britain; he meant,"

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he said, "the attainder of the regicides; upon the restoration four of them were included in that bill of attainder, which was passed after their deaths."

Mr. CURRAN then dwelt pretty much at large, upon the circumstances of that period. "A king restored, and by his nature disposed to mercy; a ministry of uncommon wisdom, seeing that the salvation of the state could be secured only by mildness and conciliation. A bigotted, interested, and irritated faction in parliament; the public mind in the highest state of division and agitation. For what then is that? That act of attainder resorted to as a precedent? Surely then it cannot be as a precedent of that servile paroxism of simulated loyalty with which the same men, who a few days before had shouted after the wheels of the good protector, now raked into the grave of the treacherous usurper, and dragged his wretched carcass through the streets: that servile and simulated loyalty, which affected to bow in obsequious admiration of the salutary lenity which their vindictive folly was labouring to frustrate: that servile and interested hypocrisy which gave a hollow and faithless support to the power of the monarch utterly regardless alike of his character or his safety.

"That the example which this act of attainder held forth was never rejected, appears from this, that it never has been disclosed in Great Britain, although that country has since that time been agitated by one revolution and vexed by two rebellions!

"So far from extending fofeiture or attainder beyond the existing law; the opinion of that wise and reflecting country was gradually maturing into a dislike of the principle altogether; until at last by the statutes of ANNE and of GEORGE the second, she declares that no forfeiture or attainder for treason, should prejudice any other than the

the actual offender, nor work any injury to the heir or other person, after the death of a pretender to the throne. Why," said Mr. CURRAN, "has Great Britain thus condemned the principle of forfeiture? Because she felt it to be unjust, and because she found it to be ineffectual."

Here Mr. CURRAN went into many reasons, to prove the impolicy of severe penal laws. "They have ever been found," he said, "more to exasperate than to restrain; where the infliction is beyond the crime, the guilt is lost in the horror of the punishment, the sufferer becomes an object of commiseration, and the injustice of the state of public odium. It was well observed, that in England, the highwayman never murdered because there the offender was not condemned to torture! but in France where the offender was broken on the wheel, the traveller seldom or never escaped! what then is it in England that sends the traveller home with life, but the comparative mildness of English law? What but the merciless cruelty of the French law, that gives the atrocious aggravation of murder to robbery? The multiplication of penal laws lessens the value of life, and when you lessen the value of life, you lessen the fear of death.

"Look to the history of England upon this subject with respect to treason; notwithstanding all its formidable array of death, of Saxon forfeiture, and of feudal corruption of blood, in what country do you read of more treasons or of more rebellions? And why? Because these terrors do not restrain the traitor. Beyond all other delinquents he is likely to be a person of that ardent, enthusiastic and intrepid spirit that is roused into more decisive and desperate daring by the prospect of peril.

"Mr. YORKE thinks the child of the traitor may be reclaimed to his loyalty by the restitution of his estate.

Mr.

Mr. Yorke might have perhaps reasoned better if he had looked to the still greater likelihood of making him a deadly enemy to the state, by the deadly ignominy inflicted on his father, and by the loss of his own inheritance.

"How keenly did HANNIBAL pursue his vengeance which he had sworn against Rome? How much more enthusiastically would he have pursued his purpose, had that oath been taken upon a father's grave! For the avenging of a father's sufferings! for the avenging of what he would have called a father's wrongs.

"If I am called upon," said he, "to give more reasons, why this precedent has not been for more than a century and a half repeated, I will say that a bill of attainder is the result of an unnatural union of the legislative and judicial functions in which the judicial has no law to restrain it; in which the legislative has no rule to guide it, unless the passion and prejudice which reject all rule and law can be called rules and laws; which puts the lives and properties of men, completely at the mercy of an arbitrary and despotic power.

"Such were the acts of posthumous attainders in Ireland, in the reign of the arbitrary ELIZABETH, who used those acts as a mere mode of robbing an Irish subject, for the benefit of an English minion. Such was the act of the ninth of WILLIAM the third, not passed for the same odious and despicable purpose, but for a purpose equally arbitrary and unjust, the purpose of transferring the property of the country, from persons professing one religion into the hands of those professing another; a purpose manifested and avowed by the remarkable clause in that act, which saves the inheritance to the heir of the traitor, provided that heir be a protestant! not so brutally tyrannical in its operations, inasmuch as it gave a right

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"I shall trespass no longer upon the patience, for which I am grateful; one word only and I have done, and that is, once more earnestly and solemnly to conjure you, to reflect that the fact, I mean the fact of guilt or innocence (which must be the foundation of this bill) is not now, after the death of the party, capable of being tried, consistently with the liberty of a free people, or the unalterable rules of eternal justice.

"And that, as to the forfeiture and ignominy which it enacts, that only can be punishment which lights upon guilt, and that can be only *vengeance* which *breaks* upon INNOCENCE."

SPEECH of the Right Honorable WILLIAM Earl of MANSFIELD in the matter of Mr. EVANS.

The interest which this question excited when it was agitated, has not yet subsided. The impression which the following speech made on the occasion may be estimated by the result, and, notwithstanding it was delivered in the House of Lords, yet as it turned on a juridical point, and falling from an enlightened statesman, profound lawyer, and finished orator, it would be unpardonable to omit it in a work of this kind.

Mr. ALLEN EVANS, (as well as some other dissenters,) though he never had taken, and always scrupled to take the sacrament according to the usage of the church of England, was chosen Sheriff of London and Middlesex, and had an action brought against him by the Chamberlain of London, on behalf of the city, for the recovery of the fine of £600, laid on all who, being elected, refused to serve the office of sheriff, by a bye-law of the corporation

corporation, made on pretence of procuring fit and able persons to serve the office; the only reason that could authorize them to make such a bye-law; though the true reason of their making it was supposed to be the obtaining a number of fines, especially from those dissenters who might scruple occasional conformity, and refuse to serve the office.

The ground of Mr. EVANS's refusal was, that as a dissenter he was by the corporation act rendered incapable of being elected into the office and of taking the office upon him, it being enacted by that act, that no person shall be placed, chosen, or elected into any office of or belonging to the government of any corporation, who had not taken the sacrament according to the rites of the church of England, within twelve calendar months preceding the time of such election. Mr. EVANS therefore apprehending himself not legally elected, pleaded that he could not be fined for not serving an office to which he could not be appointed.

The city brought their action into the sheriff's court, (a court belonging to the corporation) for the recovery of the fine; and there the defendant EVANS had judgment given against him.

He then brought a writ of error, returnable in the court of hustings, of which the city recorder is sole judge; and there also judgment was given against him.

He then sued out a certiorari, returnable before a court of delegates; namely, lord chief justice WILLS, lord chief baron PARKER, Mr. justice FOSTER, Mr. justice BATHURST, and Mr. justice WILMOT, now lord chief justice of the common pleas.

Lord chief justice WILLS died before judgment was given; but the remaining delegates, after hearing counsel several days, delivered their opinions seriatim on the

5th of July, 1762; and were unanimous in reversing the judgment given in the sheriff's court, and the court of hustings. Whereupon the city brought a writ of error, returnable before the house of lords.

Their lordships, after hearing the opinions of the rest of the judges, (except Mr. justice YATES, who was ill,) were pleased, on the 7th of Feb. 1767, to order and adjudge, that the judgment given by the commissioners' delegates, reversing the judgment given in the sheriff's court, and court of hustings, should be affirmed.

Mr. baron PERROTT was the only judge who delivered his opinion against confirming the reversal of the judgment of the sheriff's court, and court of hustings.

The sum of his argument was, that the king by the common law hath a right to the service of all his subjects; that the corporation act did not in the least abridge or infringe this right; the design of that act not being to exclude dissenters from serving, or to render them uneligible to corporation offices, but to bring them into the church. The corporation act therefore left them upon the same footing as they were by the common law.

But did the toleration act make any alteration in this respect? No; that act being nothing more than an exemption of protestant dissenters from the penalties of certain laws, therein particularly specified; and therefore if it had been designed to bear, and have an operation upon the corporation act, the corporation act ought to have been mentioned therein; and there ought to have been some enacting clause, exempting dissenters from prosecution in consequence of this act. But as this is not the case, they are eligible to this office, and liable to all the penalties for refusing to serve it, to which others are liable; and their obligation to pay the fine inflicted by this bye-law, is the effect of, or a punishment upon them

them for their non-conformity, from which they can plead no legal exemption.

After the judges had given their opinions, lord chief justice MANSFIELD, in his place as a peer, rose and made the following speech; concluding it with a motion for affirming the judgment of the delegates, which, without further debate, was agreed to Nem. Con.

"My Lords,

"As I made the motion for taking the opinion of the learned judges upon the question now under the consideration of your lordships, it may be expected that I should make some further motion in consequence of it. In moving for the opinion of the judges I had two views:—

"The first was, that the house might have the benefit of their sentiments upon the merits of the question in general, and that the question being fully discussed, the grounds of the judgment might appear clear and certain.

"And the next was to get at some particular limitations and restrictions which may be a rule of proceeding in future cases of a like nature. And this determined me as to the manner of wording the question, how far the defendant might, in the present case, be allowed to plead his disability in bar of the action brought against him. In order that we may be able to lay down a definition and criterion of the persons who are entitled to an exemption from the penalties inflicted by this bye-law, upon those who decline taking upon them the office of sheriff.

"My Lords, I apprehend the action brought against the defendant is not well grounded, and I shall shew that it must fail in every view of it. If they ground it on the corporation act, by the literal and express provision of that act, no person can be elected who hath not, with-

in a year, taken the sacrament in the church of England. The defendant hath not taken the sacrament within a year. He is not therefore elected, here they fail. If they ground it on the general design of the legislature in passing the corporation act—the design was to exclude dissenters from office and disable them from serving; for in those times, when persecuting principles prevailed and arbitrary measures were pursued, the dissenters were reputed and treated as persons ill affected and dangerous to the government. The defendant therefore, a dissenter, and in the eye of this law a person dangerous and ill affected, is excluded from office and disabled from serving. Here too they fail. If they ground the action on their own bye-law, since that bye-law was professedly made to procure fit and able persons to serve the office, and the defendant is not fit and able, being expressly disabled by statute law. Here too they fail.

"If they ground it on his disability being owing to a neglect of taking the sacrament at church, when he ought to have done it—the toleration act having freed the dissenters from all obligation to take the sacrament at church—the defendant is guilty of no neglect, no criminal neglect; there therefore they fail.

"These points, my lords, will appear clear and plain; the corporation act, pleaded by the defendant, as rendering him uneligible to this office and incapable of taking it upon him, was most certainly intended by the legislature to prohibit the persons therein described, being elected to any corporation offices, and to disable them from taking such offices upon them. The act had two parts, first it appointed a commission for turning out all that were, at that time, in office, who would not comply with what was required as the condition of their continuance therein. And then it further enacted, that from the termina-

tion of that commission, no person thereafter who had not taken the sacrament according to the rules of the church of England, within one year preceding the time of such election, should be placed, chosen, or elected into any office of or belonging to the government of any corporation. And all this was done, as it was expressly declared in the preamble to the act, in order to perpetuate the succession in corporations in the hands of persons well affected to the government in church and state.

"My lords, it was not their design, as hath been said, to bring such persons into corporations, by inducing them to take the sacrament in the church of England, lest those persons should do it who were ill affected to the government, with a view of distressing and destroying it. It was not, I say, their design to bring them in, for they could not hurt them.

"And, my lords, the reason is alleged in the act itself; it was because there were evil spirits among them, and they were afraid of evil spirits, and determined to keep them out; and therefore they put it out of the power of the electors to chuse such persons, and out of their power to serve, and accordingly prescribed a mark or character, laid down a description whereby they should be known, and distinguished by their conduct previous to such election. Instead of appointing a condition of their serving the office, resulting from their future conduct, or from some consequent action to be performed by them, they declared such persons incapable of being chosen, as had not taken the sacrament in the church within a year before such election, and without this mark of their affection to the church they could not be in office, and there could be no election.

"But, my lords, as the law then stood, no man could have pleaded this disability resulting from the corporation

act in bar of such an action, as is now brought against the defendant, because this disability was owing to what then was in the eye of the law a crime, every man being required by the canon law, received and confirmed by the statute law, to take the sacrament at the church at least once a year. The law would not permit a man to say that he had not taken the sacrament in the church of England, and he could not be allowed to plead it in bar of any action brought against him. But, my lords, the case is quite altered since the act of toleration was enacted. It is now no crime for a man, who is within the description of that act, to say he is a dissenter in any court of England, nor is it any crime for him not to take the sacrament according to the rites of the church of England. Nay, the crime is, if he does it contrary to the dictates of his conscience.

"My lords, if it is a crime not to take the sacrament at church, it must be a crime by some law, which must be either common or statute law, the canon law enforcing it, depending wholly on the statute law.—Now the statute law is repealed as to persons capable of pleading, that they are so and so qualified, and therefore the canon law is repealed with regard to those persons. If it is a crime by common law, it must be so either by principles or usage. I never heard of any usage or custom that should make it a crime not to conform to the religion of their country, not established by positive statute; as for principle it must be allowed, that the principles of natural and revealed religion and morality are the principles of common law; so that any person opposing these principles are liable to any action at common law. But neither the principles of natural religion, and much less those of revealed religion and morality, will admit of persons being persecuted for opinions differing from others;

others; with respect to particular modes of worship; it is against reason and contrary to the fitness of things.

"My lords, it hath been said, the toleration act only amounts to an exemption of protestant dissenters, from the penalties of certain laws therein particularly mentioned, and to nothing more; that if it had been intended to bear and to have any operation upon the corporation act, the corporation act ought to have been mentioned therein; and there ought to have been some enacting clause exempting dissenters from prosecution, in consequence of this act, and enabling them to plead their not having received the sacrament according to the rules of the church of England in bar of such action. But this, my lords, is much too limited and narrow a conception of the toleration act, which amounts to a great deal more than this; and it hath an influence and operation upon the corporation act in particular; and I will tell you how, my lords: it is consequentially the toleration act renders that which was illegal before, now legal; the dissenter's way of worship is permitted and allowed by this act; it is not only rendered innocent but lawful, it is established, it is put under the protection, and is not merely under the connivance, of the law. In case those who are appointed by law to register dissenting places of worship, refuse on any pretence to do it, we must upon application send down a mandamus to compel them to the discharge of their duty.

"Now, my lords, there cannot be a plainer position, than that the law protects nothing in that very respect, in which it is in the eye of the law at the same time a crime. Dissenters, my lords, within the description of the toleration act, are restored to a legal consideration and capacity, and a hundred consequences will from thence follow which are not mentioned in the act. For instance,

previous to the toleration act, it was unlawful to devise any legacy, for the support of dissenting congregations, or for the benefit of dissenting ministers, for the law knew no such assemblies and no such persons, and such a devise was absolutely void, being left to what the law called superstitious purposes. But will it be said in any court of England, that such a devise is not a good and valid one now? And yet there is nothing said of this in the toleration act.

"By that act, my lords, the dissenters are freed not only from the pains and penalties of the laws therein particularly specified, but from all ecclesiastical censures, and from all penalty and punishment whatsoever, upon account of their non-conformity, which is allowed and protected by this act; and is, therefore, in the eye of the law no longer a crime. Now, if the defendant may say he is a dissenter; if the law doth not stop his mouth; if he may declare that he hath not taken the sacrament according to the rites of the church of England, without being considered as criminal. If I say his mouth is not stopt by the law, he may then plead his not having taken the sacrament according to the rites of the church of England in bar of this action. It is such a disability as doth not leave him liable to any action, or to any penalty or punishment whatsoever.

"It is indeed said, my lords, to be a maxim in law, that a man should not be allowed to disable himself. But when this maxim is applied to the present case, it is laid down in too large a sense; I say, when it is extended to comprehend a legal disability it is taken in too great a latitude. What! shall not a man be allowed to plead that he is not fit and able. These words are inserted in the bye-law as the ground of making it; and in the plaintiff's declaration as the ground of his action against the defendant,

defendant, it is alleged that the defendant was fit and able, and that he refused to serve, not having a reasonable excuse: it is certain, and it is hereby in effect admitted, that if he is not fit and able, and that if he hath a reasonable excuse he may plead it in bar of this action. Surely he might plead that he was not worth £.15,000, provided that was really the case, as a circumstance that would render him not fit and able; and if the law allows him to say that if he hath not taken the sacrament according to the rites of the church of England, being within the description of the toleration act; he may plead that likewise, to shew that he is not fit and able; it is a reasonable, it is a lawful excuse.

"My lords, the meaning of this maxim, that a man shall not disable himself, is solely this; that a man shall not disable himself by his own wilful crime, and such a disability the law will not allow him to plead. If a man contracts to sell an estate to any person upon certain terms at such a time, and in the mean time sells it to another, he shall not be allowed to say, 'Sir, I cannot fulfil my contract, it is out of my power, I have sold my estate to another.' Such a plea would be no bar to an action, because the act of his selling it to another is the very breach of contract; so likewise a man who hath promised marriage to one lady and afterwards marries another, cannot plead in bar of a prosecution from the first lady, 'that he is already married,' because his marrying the second lady is the very breach of promise to the first. A man shall not be allowed to plead, that he was drunk in bar of a criminal prosecution, though perhaps he was, at the time, as incapable of the exercise of reason as if he had been insane, because his drunkenness was itself a crime; he shall not be allowed to excuse one crime by another. The Roman soldier, who cut off his thumbs, was not suffered

fered to plead his disability for the service, to procure his dismission with impunity, because his incapacity was designedly brought on him by his own wilful fault. And I am very glad to observe so good an agreement among the judges upon this point, who have stated it with great precision and clearness.

"When it is said, therefore, that a man cannot plead his crime in excuse for not doing what he is required by law to do, it only amounts to this, that he cannot plead in excuse, what, when pleaded, is no excuse. But, my lords, there is not in this the shadow of an objection to his pleading what is an excuse; pleading a legal disqualification. If he is nominated to be a justice of peace, he may say, I cannot be a justice of peace, for I have not a hundred pounds a year. In like manner, a dissenter may plead, I have not qualified, and I cannot qualify, and am not obliged to qualify, and you have no right to fine me for not serving. It hath been said, that the king hath a right to the service of all his subjects, and this assertion is very true, provided it be properly qualified; for surely, against the operation of this general right in particular cases, a man may plead a natural or civil disability. May not a man plead that he was upon the high seas, may not idiocy or lunacy be pleaded, which are natural disabilities? Or a judgment of a court of law, and much more a judgment of parliament, which are civil disabilities. It hath been said to be a maxim, that no man can plead his being a lunatic to evade a prosecution, for an action or deed done at that time, because it is said if he was a lunatic he could not remember any action he did during the period of his insanity; and this was doctrine formerly laid down by some judges. But I am glad to find that of late it hath been pretty generally exploded, for the reason assigned for it is in my opinion wholly insuffi-

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cient to support it, because, though he could not remember what passed during his insanity, yet he might justly say, if he ever executed such a deed or did such an action, it must have been during his confinement or lunacy; for he did not do it either before or since that time. As for the case in which a man's plea of insanity was actually set aside, it was nothing more than this, it was when they pleaded *ore tenus;* the man pleaded that he was at the time out of his senses. It was replied, 'how do you know that you was out of your senses? No man who is so knows himself to be so:' and accordingly his plea was upon this quibble set aside, not because it was not a valid one if he was out of his senses, but because they concluded he was not out of his senses. If he had alleged that he was at that time confined, being apprehended to be out of his senses, no advantage could have been taken of his manner of expressing himself, and his plea must have been allowed to have been good.

"As to LARWOOD's case, he was not allowed the benefit of the toleration act, because he did not plead it; if he had asserted his right to the benefit of it in his plea, the judgment must have been different. His inserting it in his replication was not allowed, not because it was not an allegation that would have excused him, if it had been originally taken notice of in his plea, but because its being only mentioned afterwards was a departure from his plea. In the case of the mayor of Guildford, the toleration act was pleaded, the plea was allowed good, the disability being esteemed a lawful one, and the judgment was right, and here, my lords, the defendant hath likewise asserted his right to the benefit of the toleration act in his plea. He saith he is bona fide, a dissenter within the description of the toleration act, that he hath taken the oaths and subscribed the declaration required by

by that act, to shew that he is not a popish recusant. That he hath never received the sacrament according to the rites of the church of England, and that he cannot in conscience do it, and that for more than fifty years past he hath not been present at church at the celebration of the established worship; but hath constantly received the sacrament and attended divine service amongst the protestant dissenters. And these facts are not denied by the plaintiff, though they might easily have been traversed, and it was incumbent upon them to have done it, if they had not known they should certainly fail in it. There can be no doubt therefore, my lords, that the defendant is a dissenter, an honest conscientious dissenter; and no conscientious dissenter can take the sacrament at church. The defendant says he cannot do it, and he is not obliged to do it; and as this is the case, as the law allows him to say this, as it hath not stopped his mouth the plea which he makes is a lawful plea; his disability being through no fault or crime of his own: I say he is disabled by act of parliament, without the concurrence or intervention of any fault or crime of his own; and therefore he may plead this disability in bar of the present action.

"The case of atheists and infidels is out of the present question; they come not within the description of the toleration act; and, my lords, that is the sole point to be enquired into in all cases of the like nature, with that of the defendant who here pleads the toleration act. Is the man bona fide a dissenter within the description of that act, if not he cannot plead his disability in consequence of his not having taken the sacrament in the church of England—if he is, he may lawfully and with effect plead it in bar of such an action; and the question on which this distinction is grounded must be tried by a jury. It hath been said, that this being a matter between God

God and a man's own conscience, it cannot come under the cognizance of a jury; but certainly it may: and though God alone is the absolute judge of a man's religious profession and of his conscience, yet there are some marks even of sincerity among which there is none more certain than consistency. Surely a man's sincerity may be judged of by overt acts. It is a just and excellent maxim which will hold good in this as in all other cases, 'by their fruits ye shall know them.' Do they, I do not say go to meeting now and then, but do they frequent the meeting-house? Do they join generally and statedly in divine worship with dissenting congregations; whether they do or not may be ascertained by their neighbours, and by those who frequent the same places of worship. In case a man hath occasionally conformed for the sake of places of trust and profit, in that case I imagine a jury would not hesitate in their verdict. If a man then alleges he is a dissenter, and claims the protection and the advantages of the toleration-act, a jury may form some judgment of his pretensions, enough to enable them to try and determine the question, whether he falls within the description of that act, so far as to render his disability a lawful one.

"The defendant in the present case, my lords, pleads that he is a dissenter within the description of the toleration-act, that he hath not taken the sacrament in the church of England within one year preceding the time of his supposed election, nor ever in his whole life, and that he cannot in conscience do it. Conscience, my lords, is not controllable by human laws, nor amenable to human tribunals; persecution or attempts to force conscience will never produce conviction, and are only calculated to make hypocrites or martyrs.

"My lords, there never was a single instance from the

Saxon

Saxon times down to our times in which a man was ever punished for erroneous opinions, concerning rites or modes of worship, but upon some positive law. The common law of England, which is only common reason or usage, knows of no prosecution for opinions; only for atheism, blasphemy, and reviling the Christian religion; and there have been instances of persons being punished for these upon the common law; but non-conformity, my lords, is no sin by the common law, and all positive laws inflicting any pains or penalties for non-conformity to the established rites and modes, are repealed by the act of toleration, and dissenters are thereby exempted from all ecclesiastical censures. My lords, what blood and confusion have been occasioned from the reign of Henry the Fourth, when the first penal statutes were enacted down to the revolution in these kingdoms, by laws made to force conscience. There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the Christian religion, more iniquitous and unjust, more impolitic than persecution: my lords, it is against natural religion, revealed religion, and sound policy.

"As to the great impolicy of it, any man who peruses the admirable things which the president De Thou, though a papist, hath advanced (and which I never read without rapture) in the dedication of his history to Henry the Fourth of France, will meet with the fullest conviction. I am only sorry, my lords, that his countrymen, the French, have so far profitted by the sentiments he hath there delivered, as now to see their error. I profess I am one of those who should not have broke my heart, (I hope I shall not be thought uncharitable in saying it) if they had banished the Hugonots and kept the Jesuits; in a political view, I had much rather they had retained the Jesuits

and banished the Hugonots. And, my lords, to ruin the Hugonots, a more jesuitical advice could not have been given than what hath been followed in the present case; make a law to render them incapable of office, make another law for not serving. If they accept, punish them—(for it is admitted on all hands that the defendant in the cause before your lordships is prosecutable for taking the office upon him); if they accept, punish them; if they refuse, punish them; if they say yes, punish them; if they say no, punish them. My lords, this is a most exquisite dilemma from which there is no escaping, it is a trap a man cannot get out of, it is as bad a persecution as that of Procrustes—if they are too short, stretch them; if they are too long, lop them: and, my lords, this bye-law, by which the dissenters are to be reduced to this wretched dilemma, is a bye-law of the city, a local corporation, contrary to an act of parliament, which is the law of the land; a modern bye-law, of very modern date, made long since the corporation-act, long since the toleration-act, in the face of them and in direct opposition to them, for they knew these laws were in being. It was made in some year of the reign of the late king—I forget which; but, my lords, it was made about the time of building the mansion-house. Now, my lords, if it could be supposed the city have a power of making such a bye-law, it would entirely subvert the toleration-act, the design of which was to exempt the dissenters from all penalties. For by such a bye-law they have it in their power to make every dissenter pay a fine of six hundred pounds, or any sum they please; for it amounts to that.

"The professed design of making this bye-law, was to get fit and able persons to serve the office; and the plaintiff sets forth in his declaration, that if the dissenters are excluded, they shall want fit and able persons to serve

serve the office. But, my lords, were I to deliver my own suspicion, it would be, that they did not so much wish for their services as their fines.

"My lords, dissenters have been appointed to this office; one who was blind, another who was bedridden, not I suppose on account of their being fit and able to serve the office; no, they were disabled both by nature and by law. My lords, we had a case lately in the courts below, of a person chosen mayor of a corporation while he was beyond the seas with his majesty's troops in America, and they knew him to be so. Did they want him to serve the office? No; it was impossible: but they had a mind to continue the former mayor a year longer, and to have a pretence for setting aside him who was now chosen on all future occasions as having been elected before; and, my lords, in the cause before your lordships, the defendant was by law incapable at the time of his election, and it is my firm opinion that he was chosen because he was incapable. If he had been capable he had not been chosen, for they did not want him to serve the office; they chose him because without a breach of the law, and a usurpation upon the crown, he could not serve the office. They chose him that he might fall under the penalty of their bye-law, made to serve a particular purpose, in opposition to which, and to avoid the fine thereby imposed, he hath pleaded a legal disability grounded on two acts of parliament. And as I am of opinion that his plea is good, 'I conclude with moving your lordships, that the judgment be affirmed.'"

SPEECH

SPEECH of ARCHIBALD CAMPBELL, Esq. in defence of ROBERT WILSON, of Edinburgh, charged with the Murder of JANET his wife, on the night of the 27th of January, 1803; tried before the Court of Justiciary, Edinburgh, 28th of February, 1803.

"Gentlemen of the jury,

"I completely concur with my learned brother, that the crime of murder, charged against the panel, is one of the deepest dye; and severe as the punishment is, which the law annexes to it, it is not beyond what such a crime deserves. Murder is a crime at which human nature revolts with horror: but if there has been murder in the present case, and the panel has perpetrated that crime against his wife, he has committed a crime of the greatest atrocity, and is sunk to the utmost depravity of soul. They had journeyed through life till they had nearly reached its termination, and had another world in view. The declining state of her health had rendered her an object of compassion, and made it his duty to watch over her with tenderness and care. He had made her the partner of his gains, she partook of his comforts, he had become her benefactor, a character which is productive of all the offices of kindness. If, therefore, he was guilty of her murder, it was indeed most atrocious; but in proportion as the crime appears more heinous, it requires, of course, the clearer proof. Where a common crime is committed, it may strengthen the presumption, but where it is of uncommon turpitude, it requires to be distinctly proved indeed. The evidence that has been adduced is altogether circumstantial. I admit that circumstantial proof will go a great length, but it must be strengthened by some additional facts before it is conclusive

clusive of guilt. In tracing the evidence, I shall first call your attention to those parts of it which operate in favor of the panel: and that which first presents itself is his character, which, undoubtedly, is of great consequence on this occasion; and from what we have heard of him, if he is guilty, he must be the most callous determined villain that is to be met with in society. But this idea will immediately be removed, for all the witnesses prove him to be an honest man; a kind and indulgent husband; and, in all respects, possessing an unexceptionable character. In this situation, how are we to account for this crime—he was not given to dissipation, nor was he addicted to any vicious habits, nor violence of passion. This crime is not said to have been perpetrated in sudden anger, nor from jealousy on the part of the panel. To what then are we to attribute it? The public prosecutor has told you that he had formed an attachment to the woman Lees, but this has by no means been proved. That his wife, an old woman, confined to bed by disease, and a prey to suspicion, did entertain jealousy of him, has certainly been stated; but is the evidence of a single witness sufficient to establish this? If true, could it not have been proved by the testimony of the woman herself, who is among the prosecutor's list of witnesses, but has not been brought forward. Therefore, I contend, that the attachment to this woman has not been proved. But even though it were, it is a cause inadequate to the effect. The death of his wife, an old debilitated woman, was likely to happen in the course of a few weeks. Where, then, could be the motive for murdering of her, even to obtain another when at the hazard of his life and character. Do you suppose he should thus, by the touch of an invisible demon, start up, and become a deliberate murderer? The

suspicion is, that Margaret Lees and the prisoner had formed a deliberate plan for murder; but why should they do so, when they could easily accomplish their gratification without it? They were not in high life where wealth and honors were to be conferred by removing the object which stood in the way, and therefore we must suppose they committed murder to obtain what they could easily have obtained without doing so.

"The next thing to be noticed is the time and circumstances. As to the time, it has been shewn that Mr. Mathew, the lodger, was absent in the month of December last, and yet it is strange that this plan was not then carried into execution. As to the time of night, Mr. Mathew went out at eight o'clock, and Mrs. Wilson bid him be home soon, and he might have been every moment expected, but the prisoner does not effect the deed immediately on Mathew going out; he waits till about ten, when certainly he might be expected to return. It is an hour too, when all the neighbours are awake, and might be easily alarmed. When Mr. Mathew came home, a few minutes after, he finds the door neither locked nor bolted. Does Wilson go with a candle to the passage to prevent him coming into the kitchen? No; he just acted in his usual way, and Mathew comes into the kitchen. There is nothing in the manner or looks of Wilson more than ordinary; he says this is a fine night; he lights Mr. Mathew's candle, and serves him with supper. He betrays no conscious guilt, no alarm, though he had only a little time before murdered his wife, and had before him the horrible prospect of passing the night in the room with the murdered corpse; a situation certainly more awful than for an innocent man to have sat in the vaults of the dead.

"What is his conduct next morning when he found his wife dead; he goes to Aitken's house to bid Mrs. Aitken come to his; he acquaints them his wife is dead, and it is proved he appeared in distress. He next goes to Mrs. Jollie, and yet it is said she was the only witness who lived in enmity with him, and is one of the persons who heard the cries. Had he been guilty, would he have called this woman, and yet he not only calls her, but allows her to go into the house, and inspect the dead body of his wife, while he is gone to request others to step in. He did not choose to disturb his lodger, Mr. Mathew, at an early hour, not surely for concealment, for there was a cloud of witnesses already brought. Next day he sent for Mr. Moodie, his wife's brother, and while he was sitting with him in the night-time, he, Wilson, retired to the parlor to rest himself, and takes to cover him the very clothes which covered the body of his murdered wife. These surely were sad companions with which to repose; but is this like the conduct of a guilty man? Is sleep the refuge to which the guilty fly? Will sleep seal up his eyes? Will it visit his pillow? No, a murderer must seek another refuge. Is this conduct reconcileable in the ordinary affairs of life? If it is not, will you then act upon it in a case where the life of a fellow creature is at stake? Where a fellow creature is said to have been the murderer of his wife, by strangling her in bed, in a cool and deliberate manner? That eminent and best judge of human passions could well give language to this, were it the subject of dramatic diction. He would probably have painted his situation thus:

Ha, no more moving.
Still as the grave. Shall she come in? Were't good?
I think she stirs again—No—What's the best?
If she come in, she'll sure speak to my wife;
My wife! my wife! what wife? I have no wife.

And,

And, as if speaking to Æmelia in the play,

> Why, how should she be murdered?
> You heard her say herself it was not I.
> *Æm.*—She said so, I must needs repeat the truth.
> *Oth.*—She's like a liar gone to burning hell.
> 'Twas I that killed her.

Were the circumstances which have been narrated made the subject of dramatic representation, such would be the language.

"On the Friday you see the panel only anxious to vindicate his character; in pursuance of which he goes with Moodie and others, first to Mr. Clerk, the Sheriff, then to Mr. Davidson, and from him to Mr. Scott; and this he does after he knew the charges that were to be brought against him. Thus have I stated a variety of facts which form an united and strong body of circumstantial evidence in his favor.

"It next becomes my duty to apply myself to those circumstances in the proof which appear to be against the panel, and these I shall not treat lightly. As to what has been stated respecting poison, I might rest the defence upon this ground that it is not proved, nor does it make part of the present charge; but, the fact is, the poisoned toddy which has been spoken of was merely toddy in which he had put some cream of tartar, and that gave it the offensive taste which she complained. A great deal of stress has been laid upon the cries that are said to have been heard; but this seems to have assumed its importance merely because of sudden death of the woman. Mankind are very apt to catch at what is marvellous. If a person in high life dies suddenly, a report is immediately spread of strange causes of the death, and so it is frequently in the lower ranks:—A chairman,

who used to attend the French prisoners, died some time ago in that very part of the town, and was immediately reported he had been poisoned, though it was not the case. The witnesses report different places whence they thought the cries proceeded. One of them went to M'Intosh's window to listen, as she believed them to come from thence. If his wife had died suddenly, then we should have heard all these witnesses swear that he murdered her. None of the witnesses went into the panel's room, which shews that they did not then believe what they now express, else they could not have been so void of humanity as not to have forced their way in; and there is another circumstance deserving notice, that although all the witnesses were well acquainted with the deceased, none of them say they knew it to be her voice which they heard.

"The next material fact for your observation, is that which relates to the marks of violence upon the body, for if it is not proved that she died a violent death, then there is no cause for you to judge of. Dr. Farquharson and Mr. Bryce have given in a report; and from the facts detailed in it, they are of opinion she died a violent death. When we come to Dr. Monro's evidence, however, we find his opinion is that all these circumstances might have existed without having been the consequences of a violent death. The state of the lungs, he expressly says, were the same as those in any other dead person; and as to the veins in the shoulders, &c. being distended, that circumstance proved nothing with regard to strangulation. If, therefore, Dr. Monro's opinion be just, the inference drawn from the report of the other two medical gentlemen must be wrong. Dr. Monro also spoke of the marks of the blows on the head, which, he said, might or might not occasion death. While the other

other two gentlemen expressly declare they did not think they occasioned death. As to the pottage found in her stomach, this it appears had been recently taken; but there was also some animal food which she must have taken at dinner, and tends to prove that indigestion was part of the trouble which occasioned her death. As to the mark which appeared on her neck, it cannot be shewn how this happened, for it is impossible to trace every circumstance in a person's life. She might have lain wrong in bed, or some other accidental circumstance might have caused it.

"I have now, gentlemen, shortly to call upon you to take all the circumstances together under your consideration. Attend to the conduct of the panel on the following day, his courting enquiry, and delivering himself up; and after you have weighed these matters well, say, whether there be sufficient evidence remaining to justify a verdict against him.

"Gentlemen, the observation is a trite one, but it is nevertheless true—better that a guilty person escape, than an innocent person suffer. If the guilty escape here, a day of punishment awaits him hereafter; but if you consign an innocent person to punishment, your error is irretrievable. If there be a doubt, let mercy preponderate. But there can be no doubt in this case, and therefore with confidence I call on you for a verdict of Not Guilty, or, Not Proven."

Lord Justice CLERK then addressed the Jury, and summed up the whole evidence, pointing out the bearings and tendency of its different points.

The Jury were then inclosed and desired to return their verdict on Tuesday, at two o'clock, which they did, finding, by a plurality of voices, the prisoner *Not Guilty*,

SPEECH of JAMES MACKINTOSH, Esq. (now Sir JAMES) in defence of JOHN PELTIER, Esq. for a Libel against BONAPARTE, then first Consul of the French Republic, at the court of King's Bench, Middlesex, on the 21st of February, 1803, before the Right Honorable Lord ELLENBOROUGH, and a Special Jury.

The defendant was charged with printing and publishing the following

"*Ode, attribuée à* Chénier.

" QUELLES tempêtes effroyables
" Grondent sur les flots déchaînés?
" Dieux! quels torrents épouvantables
" Roulent ces rocs déracinés?
" Les fleuves n'ont plus de rivages;
" Couvert d'écume et de naufrages,
" L'océan mugit dans les airs;
" Sur ses fondements ébranlée,
" La terre va-t-elle, écroulée,
" Se détacher de l'univers?
" Ah! plutôt pour se faire absoudre
" D'une trop longue impunité,
" Les cieux peut-être avec la foudre,
" Vont protéger la Liberté.
" Dieux du peuple que l'on opprime,
" Vengez cette auguste victime
" De l'audacieux attentat,
" Qu'aux jours malheureux de Brumaire,
" Les lois ont, dans leur sanctuaire,
" Vu consommer par un soldat.
" Trop vain espoir de la vengeance!
" Peuples, livrés aux oppresseurs,

" N'auriez-vous, dans votre souffrance,
" Que vos bras pour libérateurs?
" Le ciel est aveugle ou barbare,
" Et lorsque la foudre s'égare,
" Portée au hasard sur les vents,
" Qu'elle dévaste les campagnes,
" Ou frappe d'arides montagnes,
" Elle respecte les tirans.
" Jouets des flots et des orages,
" Voyez ces utiles vaisseaux
" De leurs débris couvrir vos plages,
" Ou s'abymer au fond des eaux :
" Tandis que la nef criminelle
" Qui porte ce Corse rebelle,
" Déserteur des champs Africains,
" Tranquillement vogue sur l'onde,
" Et de César annonce au monde,
" Et la fortune et les desseins.
" De la France ô honte éternelle!
" César, au bord du Rubicon,
" A contre lui, dans sa querelle,
" Le Sénat, Pompée et Caton ;
" Et, dans les plaines de Pharsale,
" Si la fortune est inégale,
" S'il te faut céder aux destins;
" Rome, dans ce revers funeste,
" Pour te venger, au moins il reste
" Un poignard aux derniers Romains.
" Mais sous quelles viles entraves
" A succombé notre vertu !
" Quoi ! l'univers nous voit esclaves
" Sans que nous ayons combattu !
" Au sein d'un sénat parricide,
" La noire trahison préside,
" Fiere encore de nos revers ;
" Le pouvoir sans appui, sans force,
" Tombe à sa voix, et c'est d'un Corse
" Que le Français reçoit des fers!

And

And in another part thereof to the tenor following, that is to say:

" Déjà, dans sa rage insolente,
" Le despote ose menacer. . . . ,
" Tel des flots la vague écumante
" Se brise contre le rocher.
" Est-ce pour vous donner un maître,
" Est-ce pour couronner un traître,
" Que la France a puni ses Rois?
" Non, non; l'ambition coupable
" Saura qu'il n'est d'inviolable
" Que les droits du peuple et ses lois.

And in another part thereof to the tenor following, that is to say:

" *Vœu d'un bon Patriote au* 14 *Juillet*, 1802.
" Quelle fortune a fait le fils de Létitie!
" Corse, il devient Français! Sa nouvelle patrie
" L'adopte, le nourrit au rang de ses enfants,
" Et déjà lui promet les destins les plus grands!
" Un orage survient; sous l'effort des tempêtes
" L'état est renversé; les plus augustes têtes
" Tombent, tout est brisé: le Français malheureux
" Regrette, en soupirant, son erreur et ses vœux!
" Napoléon paraît! de victoire en victoire
" Il atteint *en volant* au faîte de la gloire!
" L'Orient, l'Occident, témoins de ses exploits,
" Par lui sont terrassés et reçoivent ses loix!
" Le Nil avait frémi; mais le sort qui l'entraîne
" Rappelle son vainqueur aux rives de la Seine.
" Cinq chefs, ou cinq tyrans partageaient le pouvoir,
" Il arrache à leurs mains le sceptre et l'encensoir.
" Le voilà donc assis où s'élevait le trône!
" Que faut-il à ses vœux? un sceptre? une couronne?
" Consul, il regle tout, il fait, défait des rois,
" Peu soigneux d'être aimé, la terreur fait ses droits!
" Sur un peuple avili, jusqu'au rang des esclaves,
" Il regne, il est despote, on baise ses entraves,

" Qu'a-t-il

" Qu'a-t-il à redouter? Il a dicté la paix,
" Des rois sont à ses pieds, mendiant ses bienfaits!
" D'assurer en ses mains l'autorité suprême
" On lui porte les vœux! Les Français, des rois même
" A le féliciter s'empressent humblement,
" Et voudraient en sujets lui prêter le serment!
" Il est proclamé chef et consul pour la vie!
" Pour moi, loin qu'à son sort je porte quelqu'envie,
" Qu'il nomme, j'y consens, son digne *successeur*,
" Sur le pavois porté, qu'on l'élise *empereur!*
" Enfin, et Romulus nous rappelle la chose,
" Je fais vœu. . . dés demain qu'il ait l'apothéose!
" AMEN."

" Gentlemen of the jury,

" The time is now come for me to address you on behalf of the unfortunate gentleman who is the defendant on this record.

" I must begin with observing, that though I know myself too well to ascribe to any thing but to the kindness and good nature of my learned friend the attorney-general, the unmerited praises which he has been pleased to bestow on me, yet I will venture to say, he has done me no more than justice in supposing that in this place, and on this occasion, where I exercise the functions of an inferior minister of justice, an inferior minister indeed, but a minister of justice still, I am incapable of lending myself to the passions of any client, and that I will not make the proceedings of this court subservient to any political purpose.

" Whatever is respected by the laws and government of my country shall, in this place, be respected by me. In considering matters that deeply interest the quiet, the safety,

safety, and the liberties of all mankind, it is impossible for me not to feel warmly and strongly; but I shall make an effort to control my feelings, however painful that effort may be; and where I cannot speak out, but at the risk of offending either sincerity or prudence, I shall labor to contain myself and be silent.

"I cannot but feel, gentlemen, how much I stand in need of your favorable attention and indulgence. The charge which I have to defend is surrounded with the most invidious topics of discussion; but they are not of my seeking. The case and the topics which are inseparable from it are brought here by the prosecutor.

"Here I find them, and here it is my duty to deal with them, as the interests of Mr. PELTIER seem to me to require. He, by his choice and confidence, has cast on me a very arduous duty, which I could not decline, and which I can still less betray. He has a right to expect from me a faithful, a zealous, and a fearless defence; and this his just expectation, according to the measure of my humble abilities, shall be fulfilled. I have said, a fearless defence. Perhaps that word was unnecessary in the place where I now stand. Intrepidity in the discharge of professional duty is so common a quality at the English bar, that it has, thank God! long ceased to be a matter of boast or praise. If it had been otherwise, gentlemen, if the bar could have been silenced or overawed by power, I may presume to say, that an English jury would not this day have been met to administer justice. Perhaps I need scarce say that my defence *shall* be fearless, in a place where fear never entered any heart but that of a criminal. But you will pardon me for having said so much, when you consider who the real parties before you are.

"Gentlemen,

"Gentlemen, the real prosecutor is the master of the greatest empire the civilized world ever saw. The defendant is a defenceless proscribed exile. He is a French royalist, who fled from his country in the autumn of 1792, at the period of that memorable and awful emigration, when all the proprietors and magistrates of the greatest civilized country of Europe were driven from their homes by the daggers of assassins; when our shores were covered, as with the wreck of a great tempest, with old men, and women, and children, and ministers of religion, who fled from the ferocity of their countrymen as before an army of invading barbarians.

"The greater part of these unfortunate exiles, of those I mean who have been spared by the sword, who have survived the effect of pestilential climates or broken hearts, have been since permitted to revisit their country. Though despoiled of their all, they have eagerly embraced even the sad privilege of being suffered to die in their native land.

"Even this miserable indulgence was to be purchased by compliances, by declarations of allegiances to the new government, which some of these suffering royalists deemed incompatable with their conscience, with their dearest attachments and their most sacred duties. Among these last is M. PELTIER. I do not presume to blame those who submitted, and I trust you will not judge harshly of those who refused. You will not think unfavorably of a man who stands before you as the voluntary victim of his loyalty and honor. If a revolution (which God avert) were to drive us into exile, and to cast us on a foreign shore, we should expect, at least, to be pardoned by generous men, for stubborn loyalty, and unseasonable fidelity, to the laws and government of our fathers.

"This

"This unfortunate gentleman had devoted a great part of his life to literature. It was the amusement and ornament of his better days. Since his own ruin, and the desolation of his country, he has been compelled to employ it as a means of support. For the last ten years he has been engaged in a variety of publications of considerable importance; but, since the peace, he has desisted from serious political discussion, and confined himself to the obscure journal which is now before you; the least calculated, surely, of any publication that ever issued from the press, to rouse the alarms of the most jealous government; which will not be read in England, because it is not written in our language; which cannot be read in France, because its entry into that country is prohibited by a power whose mandates are not very supinely enforced, nor often evaded with impunity: which can have no other object than that of amusing the companions of the author's principles and misfortunes, by pleasantries and sarcasms on their victorious enemies. There is, indeed, gentlemen, one remarkable circumstance in this unfortunate publication: it is the only, or almost the only, journal, which still dares to espouse the cause of that royal and illustrious family, which but fourteen years ago was flattered by every press, and guarded by every tribunal, in Europe. Even the court in which we are met affords an example of the vicissitudes of their fortune. My learned friend has reminded you, that the last prosecution tried in this place, at the instance of a French government, was for a libel on that magnanimous princess, who has since been butchered in sight of her palace.

"I do not make these observations with any purpose of questioning the general principles which have been laid down by my learned friend. I must admit his right

to

to bring before you those who libel any government recognised by his Majesty, and at peace with the British empire. I admit that whether such a government be of yesterday or a thousand years old, whether it be a crude and bloody usurpation or the most ancient, just, and paternal authority upon earth, we are *here* equally bound by his Majesty's recognition to protect it against libellous attacks. I admit that if, during our usurpation, lord Clarendon had published his history at Paris, or the marquis of Montrose his verses on the murder of his Sovereign, or Mr. Cowley his discourse on Cromweli's government, and if the English ambassador had complained, the *Président de Molé*, or any other of the great magistrates who then adorned the parliament of Paris, however reluctantly, painfully, and indignantly, might have been compelled to have condemned these illustrious men to the punishment of libellers. I say this only for the sake of bespeaking a favorable attention from your generosity and compassion to what will be feebly urged in behalf of my unfortunate client, who has sacrificed his fortune, his hopes, his connexions, his country, to his conscience; who seems marked out for destruction in this his last asylum.

"That he still enjoys the security of this asylum, that he has not been sacrificed to the resentment of his powerful enemies, is perhaps owing to the firmness of the king's government. If that be the fact, gentlemen, if his Majesty's ministers have resisted applications to expel this unfortunate gentleman from England, I should publicly thank them for their firmness, if it were not unseemly and improper to suppose that they could have acted otherwise—to thank an English government for not violating the most sacred duties of hospitality; for not bringing indelible disgrace on their country.

"But

"But be that as it may, gentlemen, he now comes before you, perfectly satisfied that an English jury is the most refreshing prospect that the eye of accused innocence ever met in a human tribunal, and he feels with me the most fervent gratitude to the Protector of empires, that, surrounded as we are with the ruins of principalities and powers, we still continue to meet together, after the manner of our fathers, to administer justice in this her ancient sanctuary.

"There is another point of view in which this case seems to me to merit your most serious attention. *I consider it as the first of a long series of conflicts between the greatest power in the world, and the only free press remaining in Europe.* No man living is more thoroughly convinced than I am, that my learned friend, Mr. Attorney General, will never degrade his excellent character, that he will never disgrace his high magistracy by mean compliances, by an immoderate and unconscientious exercise of power; yet I am convinced by circumstances which I shall now abstain from discussing, that *I am to consider this as the first of a long series of conflicts, between the greatest power in the world, and the only free press now remaining in Europe.* Gentlemen, this distinction of the English press is new—it is a proud and melancholy distinction. Before the great earthquake of the French revolution had swallowed up all the asylums of free discussion on the continent, we enjoyed that privilege, indeed, more fully than others, but we did not enjoy it exclusively. In great monarchies the press has always been considered as too formidable an engine to be entrusted to unlicensed individuals. But in other continental countries, either by the laws of the state, or by long habits of liberality and toleration in magistrates, a liberty of discussion has been enjoyed, perhaps sufficient for most useful purposes. It existed,

existed, in fact, where it was not protected by law; and the wise and generous connivance of governments was daily more and more secured by the growing civilization of their subjects. In Holland, in Switzerland, in the imperial towns of Germany, the press was either legally or practically free. Holland and Switzerland are no more; and, since the commencement of this prosecution, fifty imperial towns have been erased from the list of independent states, by one dash of the pen. Three or four still preserve a precarious and trembling existence. I will not say by what compliances they must purchase its continuance. I will not insult the feebleness of states whose unmerited fall I do most bitterly deplore.

"These governments were in many respects one of the most interesting parts of the ancient system of Europe. Unfortunately, for the repose of mankind, great states are compelled, by regard to their own safety, to consider the military spirit and martial habits of their people as one of the main objects of their policy. Frequent hostilities seem almost the necessary condition of of their greatness; and, without being great, they cannot long remain safe. Smaller states exempted from this cruel necessity—a hard condition of greatness, a bitter satire on human nature—devoted themselves to the arts of peace, to the cultivation of literature, and the improvement of reason. They became places of refuge for free and fearless discussion; they were the impartial spectators and judges of the various contests of ambition, which, from time to time, disturbed the quiet of the world. They thus became peculiarly qualified to be the organs of that public opinion which converted Europe into a great republic, with laws which mitigated, though they could not extinguish, ambition; and with moral tribunals to which even the most despotic sovereigns were

amenable. If wars of aggrandisement were undertaken, their authors were arraigned in the face of Europe. If acts of internal tyranny were perpetrated, they resounded from a thousand presses throughout all civilized countries. Princes, on whose will there were no legal checks, thus found a moral restraint, which the most powerful of them could not brave with absolute impunity. They acted before a vast audience, to whose applause or condemnation they could not be utterly indifferent. The very constitution of human nature, the unalterable laws of the mind of man, against which all rebellion is fruitless, subjected the proudest tyrants to this control. No elevation of power, no depravity, however consummate, no innocence, however spotless, can render man wholly independent of the praise or blame of his fellow-men.

"These governments were in other respects one of the most beautiful and interesting parts of our ancient system. The perfect security of such inconsiderable and feeble states, their undisturbed tranquillity, amidst the wars and conquests that surrounded them, attested, beyond any other part of the European system, the moderation, the justice, the civilization to which Christian Europe had reached in modern times. Their weakness was protected only by the habitual reverence for justice, which, during a long series of ages, had grown up in Christendom. This was the only fortification which defended them against those mighty monarchs to whom they offered so easy a prey. And, till the French revolution, this was sufficient. Consider, for instance, the situation of the republic of Geneva: think of her defenceless position in the very jaws of France; but think also of her undisturbed security, of her profound quiet, of the brilliant success with which she applied to industry and literature, while Louis XIV. was pouring his myriads into

into Italy before her gates: call to mind, if ages crowded into years have not effaced them from your memory, that happy period when we scarcely dreamt more of the subjugation of the feeblest republic of Europe, than of the conquest of her mightiest empire, and tell me if you can imagine a spectacle more beautiful to the moral eye, or a more striking proof of progress in the noblest principles of true civilization.

"These feeble states, these monuments of the justice of Europe, the asylum of peace, of industry, and of literature, the organs of public reason, the refuge of oppressed innocence and persecuted truth, have perished with those ancient principles which were their sole guardians and protectors. They have been swallowed up by that fearful convulsion, which has shaken the uttermost corners of the earth. They are destroyed and gone for ever.

"One asylum of free discussion is still inviolate. There is still one spot in Europe where man can freely exercise his reason on the most important concerns of society, where he can boldly publish his judgment on the acts of the proudest and most powerful tyrants. The press of England is still free. It is guarded by the free constitution of our forefathers. It is guarded by the hearts and arms of Englishmen; and I trust I may venture to say, that if it be to fall, it will fall only under the ruins of the British empire.

"It is an awful consideration, gentlemen. Every other monument of European liberty has perished.—That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands—It stands, thanks be to God! solid and entire—but it stands alone, and it stands amidst ruins.

"In these extraordinary circumstances, I repeat that I must consider this as the first of a long series of conflicts between the greatest power in the world and the only free press remaining in Europe, and I trust that you will consider yourselves as the advanced guard of liberty, as having this day to fight the first battle of free discussion against the most formidable enemy that it ever encountered. You will therefore excuse me, if on so important an occasion I remind you, at more length than is usual, of those general principles of law and policy on this subject, which have been handed down to us by our ancestors.

"Those who slowly built up the fabric of our laws, never attempted any thing so absurd as to define by any precise rule the obscure and shifting boundaries which divide libel from history or discussion. It is a subject which, from its nature, admits neither rules nor definitions. The same words may be perfectly innocent in one case, and most mischievous and libellous in another. A change of circumstances, often apparently slight, is sufficient to make the whole difference. These changes, which may be as numerous as the variety of human intentions and conditions, can never be foreseen or comprehended under any legal definitions, and the framers of our law have never attempted to subject them to such definitions. They left such ridiculous attempts to those who call themselves philosophers, but who have in fact proved themselves most grossly and stupidly ignorant of that philosophy which is conversant with human affairs.

"The principles of the law of England on the subject of political libel are few and simple, and they are necessarily so broad, that, without an habitually mild administration of justice, they might encroach materially

on the liberty of political discussion. Every publication which is intended to vilify either our own government, or the government of any foreign state in amity with this kingdom, is, by the law of England, a libel. To protect political discussion from the danger to which it would be exposed by these wide principles, if they were severely and literally enforced, our ancestors trusted to various securities; some growing out of the law and constitution, and others arising from the character of those public officers whom the constitution had formed, and to whom its administration is committed. They trusted in the first place to the moderation of the legal officers of the crown, educated in the maxims and imbued with the spirit of a free government; controlled by the superintending power of parliament, and peculiarly watched in all political prosecutions by the reasonable and wholesome jealousy of their fellow-subjects. And I am bound to admit, that since the glorious æra of the revolution, making due allowance for the frailties, the faults, and the occasional vices of men, they have upon the whole not been disappointed. I know that in the hands of my learned friend, that trust will never be abused. But, above all, they confided in the moderation and good sense of juries, popular in their origin, popular in their feelings, popular in their very prejudices, taken from the mass of the people, and immediately returning to that mass again. By these checks and temperaments they hoped that they should sufficiently repress malignant libels, without endangering that freedom of inquiry which is the first security of a free state. They knew that the offence of a political libel is of a very peculiar nature, and differing in the most important particulars from all other crimes. In all other cases the most severe execution of law can only spread terror among the guilty,

but in political libels it inspires even the innocent with fear. This striking peculiarity arises from the same circumstances which make it impossible to define the limits of libel and innocent discussion—which make it impossible for a man of the purest and most honorable mind, to be always perfectly certain, whether he be within the territory of fair argument and honest narrative, or whether he may not have unwittingly overstepped the faint and varying line which bounds them.—But, gentlemen, I will go farther.—This is the only offence where severe and frequent punishments not only intimidate the innocent, but deter men from the most meritorious acts, and from rendering the most important services to their country—they indispose and disqualify men for the discharge of the most sacred duties which they owe to mankind. To inform the public on the conduct of those who administer public affairs, requires courage and conscious security. It is always an invidious, and obnoxious office, but it is often the most necessary of all public duties. If it is not done boldly, it cannot be done effectually; and it is not from writers trembling under the uplifted scourge, that we are to hope for it.

"There are other matters, gentlemen, to which I am desirous of particularly calling your attention. These are the circumstances in the condition of this country, which have induced our ancestors, at all times, to handle, with more than ordinary tenderness, that branch of the liberty of discussion which is applied to the conduct of foreign states. The relation of this kingdom to the commonwealth of Europe is so peculiar, that no history, I think, furnishes a parallel to it. From the moment in which we abandoned all projects of continental aggrandisement, we could have no interest respecting the state of the continent, but the interests of national safety, and of commercial prosperity. The paramount interest of

every state, that which comprehends every other, is SECURITY. And the security of Great Britain requires nothing on the continent but the uniform observance of justice. It requires nothing but the inviolability of ancient boundaries, and the sacredness of ancient possessions, which, on these subjects, is but another form of words for justice. A nation which is herself shut out from the possibility of continental aggrandisement, can have no interest but that of preventing such unjust aggrandisement in others. We can have no interest of safety but the preventing of those encroachments, which, by their immediate effects, or by their example, may be dangerous to ourselves. We can have no interest of ambition respecting the continent. So that neither our real, nor even our apparent interests, can ever be at variance with justice.

"As to commercial prosperity, it is, indeed, a secondary, but it is still a very important branch of our national interest, and it requires nothing on the continent of Europe, but the *maintenance of peace*, as far as the paramount interest of security will allow.

"Whatever ignorant or prejudiced men may affirm, no war was ever gainful to a commercial nation. Losses may be less in some, and incidental profits may arise in others. But no such profits ever formed an adequate compensation for the waste of capital and industry which all wars must produce. Next to peace, our commercial greatness depends chiefly on the affluence and prosperity of our neighbours. A commercial nation has, indeed, the same interest in the wealth of her neighbours, that a tradesman has in the wealth of his customers. The prosperity of England has been chiefly owing to the general progress of civilized nations in the arts and improvements of social life. Not an acre of land has

been brought into cultivation in the wilds of Siberia, or on the shores of the Mississippi which has not widened the market for English industry. It is nourished by the progressive prosperity of the world, and it amply repays all that it has received. It can only be employed in spreading civilization and enjoyment over the earth, and by the unchangeable laws of nature in spite of the impotent tricks of governments, it is now partly applied to revive the industry of those very nations who are the loudest in their senseless clamors against its pretended mischiefs. If the blind and barbarous project of destroying English prosperity could be accomplished, it could have no other effect, than that of completely beggaring the very countries, who now stupidly ascribe their own poverty to our wealth.

"Under these circumstances, gentlemen, it became the obvious policy of this kingdom (a policy in unison with the maxims of a free government), to consider with great indulgence even the boldest animadversions of our political writers, on the ambitious projects of foreign states.

"Bold, and sometimes indiscreet, as these animadversions might be, they had at least the effect of warning the people of their danger, and of rousing the national indignation against those encroachments, which England has almost always been compelled in the end to resist by arms: seldom, indeed, has she been allowed to wait, till a provident regard to her own safety should compel her to take up arms in defence of others. For as it was said by a great orator of antiquity, that no man ever was the enemy of the republic who had not first declared war against him, so I may say, with truth, that no man ever meditated the subjugation of Europe, who did not consider the destruction, or the corruption, of England as the

the first condition of his success. If you examine history you will find, that no such project was ever formed in which it was not deemed a necessary preliminary, either to detach England from the common cause, or to destroy her. It seems as if all the conspirators against the independence of nations, might have sufficiently taught other states that England is their natural guardian and protector; that she alone has no interest but their preservation; that her safety is interwoven with their own. When vast projects of aggrandisement are manifested, when schemes of criminal ambition are carried into effect, the day of battle is fast approaching for England. Her free government cannot engage in dangerous wars, without the hearty and affectionate support of her people. A state thus situated cannot, without the utmost peril, silence those public discussions, which are to point the popular indignation against those who must soon be enemies. In domestic dissensions, it may sometimes be the supposed interest of government to overawe the press. But it never can be even their apparent interest when the danger is purely foreign. A king of England who, in such circumstances, should conspire against the free press of this country, would undermine the foundations of his own throne; he would silence the trumpet which is to call his people round his standard.

"Our ancestors never thought it their policy to avert the resentment of foreign tyrants, by enjoining English writers to contain and repress their just abhorrence of the criminal enterprises of ambition. This great and gallant nation, which has fought in the front of every battle against the oppressors of Europe, has sometimes inspired fear, but thank God she has never felt it. We know that they are our real, and must soon become our declared, foes. We know that there can be a cordial amity

amity between the natural enemies and the independence of nations. We have never adopted the cowardly and short-sighted policy of silencing our press, of breaking the spirit and palsying the hearts of our people, for the sake of a hollow and precarious truce. We have never been base enough to purchase a short respite from hostilities, by sacrificing the first means of defence; the means of rousing the public spirit of the people, and directing it against the enemies of their country and of Europe.

"Gentlemen, the public spirit of a people (by which I mean the whole body of those affections which unites men's hearts to the commonwealth) is in various countries composed of various elements, and depends on a great variety of causes. In this country, I may venture to say, that it mainly depends on the vigor of the popular parts and principles of our government; and that the spirit of liberty is one of its most important elements. Perhaps it may depend less on those advantages of a free government, which are most highly estimated by calm reason, than upon those parts of it which delight the imagination, and flatter the just and natural pride of mankind. Among these we are certainly not to forget the political rights which are not uniformly withheld from the lowest classes, and the continual appeal made to them, in public discussion, upon the greatest interests of the state. These are undoubtedly among the circumstances which endear to Englishmen their government and their country, and animate their zeal for that glorious institution which confers on the meanest of them a sort of distinction and nobility unknown to the most illustrious slaves, who tremble at the frown of a tyrant. Whoever were unwarily and rashly to abolish or narrow these privileges (which it must be owned are liable to great abuse, and to very specious objections,) might perhaps discover, too

too late, that he had been dismantling his country. Of whatever elements public spirit is composed, it is always and every where the chief defensive principle of a state. It is perfectly distinct from courage. Perhaps no nation, certainly no European nation, ever perished from an inferiority of courage. And undoubtedly no considerable nation was ever subdued, in which the public affections were sound and vigorous. It is public spirit which binds together the dispersed courage of individuals, and fastens it to the commonwealth. It is, therefore, as I have said, the chief defensive principle of every country. Of all the stimulants which rouse it into action, the most powerful among us is certainly the press; and it cannot be restrained or weakened without imminent danger, that the national spirit may languish and that the people may act with less zeal and affection for their country in the hour of its danger.

"These principles, gentlemen, are not new—they are genuine old English principles. And though in our days they have been disgraced and abused by ruffians and fanatics, they are in themselves as just and sound as they are liberal; and they are the only principles on which a free state can be safely governed.—These principles I have adopted since I first learnt the use of reason, and I think I shall abandon them only with life.

"On these principles I am now to call your attention to the libel with which this unfortunate gentleman is charged. I heartily rejoice that I concur with the greatest part of what has been said by my learned friend Mr. Attorney General, who has done honor even to his character by the generous and liberal principles which he has laid down. He has told you that he does not mean to attack *historical narrative*—He has told you that he does not mean to attack *political discussion*—He has told you also

also that he does not consider every intemperate word into which a writer, fairly engaged in narration or reasoning, might be betrayed, as a fit subject for prosecution. The essence of the crime of libel consists in the malignant mind which the publication proves, and from which it flows. A jury must be convinced before they find a man guilty of libel that his intention was to libel—not to state facts which he believed to be true, or reasonings which he thought just.—My learned friend has told you that the liberty of history includes the right of publishing those observations which occur to intelligent men when they consider the affairs of the world, and I think he will not deny that it includes also the right of expressing those sentiments which all good men feel on the contemplation of extraordinary examples of depravity or excellence.

"One more privilege of the historian, which the attorney general has not named, but to which his principles extend, it is now my duty to claim on behalf of my client—I mean the right of *republishing, historically,* those documents (whatever their original malignity may be) which display the character and unfold the intentions of governments, or factions, or individuals. I think my learned friend will not deny, that an historical compiler may innocently republish in England the most insolent and outrageous declaration of war ever published against his Majesty by a foreign government. The intention of the original author was to vilify and degrade his Majesty's government; but the intention of the compiler is only to gratify curiosity, or perhaps to rouse just indignation against the calumniator whose production he republishes. —His intention is not libellous—his republication is therefore not a libel. Suppose this to be the case with Mr. PELTIER. Suppose him to have republished libels with

with a merely historical intention. In that case it cannot be pretended that he is more a libeller than my learned friend Mr. ABBOT, who read these supposed libels to you when he opened the pleadings. Mr. ABBOT republished them to you, that you might know and judge of them—Mr. PELTIER, on the supposition I have made, also republished them that the public might know and judge of them.

"You already know that the general plan of Mr. PELTIER's publication was to give a picture of the cabals and intrigues, of the hopes and projects, of French factions. It is undoubtedly a natural and necessary part of this plan to republish all the serious and ludicrous pieces which these factions circulate against each other. The Ode ascribed to Chenier or Ginguené I do really believe to have been written at Paris, to have been circulated there, to have been there attributed to some one of these writers, to have been sent to England as their work, and as such, to have been republished by Mr. PELTIER. But I am not sure that I have evidence to convince you of the truth of this—Suppose that I have not; will my learned friend say that my client must necessarily be convicted? I, on the contrary, contend, that it is for my learned friend to shew that it is not an historical republication—Such it professes to be, and that profession it is for him to disprove—The profession may indeed be "a mask," but it is for my friend to pluck off the mask, and expose the libeller, before he calls upon you for a verdict of guilty.

"If the general lawfulness of such republications be denied, then I must ask Mr. Attorney-General to account for the long impunity which English newspapers have enjoyed. I must request him to tell you why they have been suffered to republish all the atrocious, official and unofficial

unofficial libels which have been published against his Majesty for the last ten years, by the Brissots, the Marats, the Dantons, the Robespierres, the Barrères, the Talliens, the Reubells, the Merlins, the Barrases, and all that long line of bloody tyrants who oppressed their own country, and insulted every other which they had not the power to rob. What must be the answer? That the English publishers were either innocent if their motive was to gratify curiosity, or praise-worthy if their intention was to rouse indignation against the calumniators of their country. If any other answer be made, I must remind my friend of a most sacred part of his duty—the duty of protecting the honest fame of those who are absent in the service of their country. Within these few days, we have seen in every newspaper in England, a publication, called the report of Col. SEBASTIANI, in which a gallant British officer (General STUART) is charged with writing letters to procure assassination. The publishers of that infamous report are not and will not be prosecuted, because their intention is not to libel General STUART. On any other principle why have all our newspapers been suffered to circulate that most atrocious of all libels against the king and people of England, which purports to be translated from the Moniteur of the 9th of August, 1802; a libel against a prince, who has passed through a factious and stormy reign of forty-three years without a single imputation on his personal character—against a people who have passed through the severest trials of national virtue with unimpaired glory, who alone in the world can boast of mutinies without murder, of triumphant mobs without massacre, of bloodless revolutions and of civil wars unstained by a single assassination—that most impudent and malignant libel, which charges such a king of such a people not only with having

having hired assassins, but with being so shameless, so lost to all sense of character, as to have bestowed on these assassins, if their murderous projects had succeeded, the highest badges of public honor, the rewards reserved for statesmen and heroes—the order of the garter;—the order which was founded by the heroes of Cressy and Poitiers—the garter which was worn by Henry the Great and by Gustavus Adolphus, which might now be worn by the HERO, who, on the shores of Syria, the ancient theatre of English chivalry, has revived the renown of English valor and of English humanity—that unsullied garter, which a detestable libeller dares to say is to be paid as the price of murder.

"If I had now to defend an English publisher for the republication of that abominable libel, what must I have said on his defence? I must have told you that it was originally published by the French government in their official gazette, that it was republished by the English editor to gratify the natural curiosity, perhaps to rouse the just resentment of his English readers. I should have contended, and, I trust, with success, that his republication of a libel was not libellous, that it was lawful, that it was laudable. All that would be important, at least all that would be essential in such a defence I now state to you on behalf of Mr. PELTIER; and if an English newspaper may safely republish the libels of the French government against his Majesty, I shall leave you to judge whether Mr. PELTIER, in similar circumstances may not, with equal safety, republish the libels of Chenier against the First Consul. On the one hand you have the assurances of Mr. PELTIER in the context that this ode is merely a republication—you have also the general plan of his work with which such a republication is perfectly consistent. On the other hand, you have only the

the suspicions of Mr. Attorney-General that this ode is an original production of the defendant.

"But supposing that you should think it his production, and that you should also think it a libel—even in that event, which I cannot anticipate, I am not left without a defence. The question will still be open—"Is it a libel on Buonaparté, or is it a libel on Chenier or Ginguené?" This is not an information for a libel on Chenier; and if you should think that this ode was produced by Mr. PELTIER, and ascribed by him to Chenier for the sake of covering that writer with the odium of jacobinism, the defendant is entitled to your verdict of not guilty. Or if you should believe that it is ascribed to jacobinical writers for the sake of satirizing a French jacobinical faction, you must also in that case acquit him. Butler puts seditious and immoral language into the mouths of rebels and fanatics, but Hudibras is not for that reason a libel on morality or government. Swift, in the most exquisite piece of irony in the world (his argument against the abolition of Christianity), uses the language of those shallow, atheistical coxcombs whom his satire was intended to scourge. The scheme of his irony required some levity, and even some profaneness of language. But nobody was ever so dull as to doubt whether Swift meant to satirize atheism or religion. In the same manner Mr. PELTIER, when he wrote a satire on French jacobinism, was compelled to ascribe to jacobins a jacobinical hatred of government. He was obliged, by dramatic propriety, to put into their mouths those anarchical maxims which are complained of in this ode. But it will be said, these incitements to insurrection are here directed against the authority of Buonaparté. This proves nothing, because they must have been so directed, if the ode were a satire on jacobinism. French jacobins must

must inveigh againſt Buonaparté; because he exercises the powers of government. The ſatirist who attacks them muſt aſcribe their ſentiments, and adopt their language.

"I do not mean to say, gentlemen, that Mr. PELTIER feels any affection, or profeſſes any allegiance to Buonaparté. If I were to say ſo, he would diſown me. He would diſdain to purchaſe an acquittal by the profeſſion of ſentiments which he diſclaims and abhors. Not to love Buonaparté, is no crime.—The queſtion is not, whether Mr. PELTIER loves or hates the First Conſul, but whether he has put revolutionary language into the mouth of jacobins, with a view to paint their incorrigible turbulence, and to exhibit the fruits of jacobinical revolutions to the deteſtation of mankind.

"Now, Gentlemen, we cannot give a probable anſwer to this queſtion without previouſly examining two or three queſtions on which the anſwer to the firſt muſt very much depend. Is there a faction in France which breathes the ſpirit, and is likely to employ the language of this ode? Does it perfectly accord with their character and views? Is it utterly irreconcilable with the feelings, opinions, and wiſhes of Mr. PELTIER? If theſe queſtions can be anſwered in the affirmative, then I think you muſt agree with me, that Mr. PELTIER does not in this ode ſpeak his own ſentiments, that he does not here vent his own reſentment againſt Buonaparté, but that he perſonates a jacobin, and adopts his language for the ſake of ſatisfying his principles.

"These queſtions, Gentlemen, lead me to thoſe political diſcuſſions, which, generally ſpeaking, are in a court of juſtice odious and diſguſting. Here, however, they are neceſſary, and I ſhall conſider them only as far as the neceſſities of this cauſe require.

"Gentlemen, the French revolution—I must pause, after I have uttered words which present such an overwhelming idea—But I have not now to engage in an enterprize so far beyond my force as that of examining and judging that tremendous revolution—I have only to consider the character of the factions which it must have left behind it.

"The French revolution began with great and fatal errors. These errors produced atrocious crimes. A mild and feeble monarchy was succeeded by bloody anarchy, which very shortly gave birth to military despotism. France, in a few years, described the whole circle of human society.

"All this was in the order of nature—when every principle of authority and civil discipline, when every principle which enables some men to command and disposes others to obey was extirpated from the mind by atrocious theories, and ſtill more atrocious examples; when every old inſtitution was trampled down with contumely, and every new institution covered in its cradle with blood; when the principle of property itself, the sheet-anchor of society, was annihilated; when in the persons of the new possessors, whom the poverty of language obliges us to call proprietors, it was contaminated in its source by robbery and murder, and it became separated from that education and those manners, from that general presumption of superior knowledge and more scrupulous probity, which form its only liberal titles to respect; when the people were taught to despise every thing old, and compelled to detest every thing new; there remained only one principle ſtrong enough to hold society together, a principle utterly incompatible, indeed, with liberty, and unfriendly to civilization itself, a tyrannical and barbarous principle, but, in that miserable condition of human affairs, a refuge from ſtill more intolerable evils—I mean the principle of military

military power which gains ſtrength from that confuſion and bloodshed in which all the other elements of society are diſſolved, and, in these terrible extremities, is the cement that preserves it from total destruction.

" Under such circumstances, Buonaparté usurped the supreme power in France—I say *usurped*, because an illegal assumption of power is an usurpation. But usurpation, in its ſtrongest moral sense, is scarcely applicable to a period of lawless and savage anarchy. The guilt of military usurpation, in truth, belongs to the authors of those confusions which sooner or later give birth to such an usurpation.

" Thus," to use the words of the historian, " by re-
" cent as well as ancient example, it became evident,
" that illegal violence, with whatever pretences it may be
" covered, and whatever object it may pursue, must ine-
" vitably end at last in the arbitrary and despotic govern-
" ment of a ſingle person *." But though the government of Buonaparté has silenced the revolutionary factions, it has not and it cannot have extinguished them. No human power could impress upon the minds of men all those sentiments and opinions which the sophistry and anarchy of fourteen years had obliterated. A faction must exist, which breathes the spirit of the ode now before you.

" It is, I know, not the spirit of the quiet and submissive majority of the French people. They have always rather suffered, than acted in, in the revolution. Completely exhausted by the calamities through which they have passed, they yield to any power which gives them repose. There is, indeed, a degree of oppression which rouses men to resistance, but there is another and a greater which wholly subdues and unmans them. It is remarkable that Roberspierre himself was safe, till he

* Hume's Hiſt. of England, Vol. VII. p. 220.

mankind. Tyrannical power is their only refuge from the just vengeance of their fellow-creatures; murder is their only means of usurping power. They have no taste, no occupation, no pursuit, but power and blood. If their hands are tied, they must at least have the luxury of murderous projects. They have drank too deeply of human blood ever to relinquish their cannibal appetite.

"Such a faction exists in France. It is numerous; it is powerful; and it has a principle of fidelity stronger than any that ever held together a society. They are banded together by despair of forgiveness, by the unanimous detestation of mankind. They are now contained by a severe and stern government. But they still meditate the renewal of insurrection and massacre, and they are prepared to renew the worst and most atrocious of their crimes, that crime against posterity and against human nature itself, that crime of which the latest generations of mankind may feel the fatal consequences—the crime of degrading and prostituting the sacred name of liberty.

"I must own that however paradoxical it may appear, I should almost think not worse, but more meanly of them if it were otherwise. I must then think them destitute of that—which I will not call courage, because that is the name of a virtue—but of that ferocious energy which alone rescues ruffians from contempt. If they were destitute of that which is the heroism of murderers, they would be the lowest as well as the most abominable of beings.

"It is impossible to conceive any thing more despicable than wretches who, after hectoring and bullying over their meek and blameless sovereign, and his defenceless family, whom they kept so long in a dungeon trembling for their existence—whom they put to death by a slow torture for three years—after playing the republicans and

the

tyrannicides to women and children—become the supple and fawning slaves of the first government that knows how to wield the scourge with a firm hand.

" I have used the word " republican," because it is the name by which this atrocious faction describes itself. The assumption of that name is one of their crimes. They are no more republicans than royalists; they are the common enemies of all human society. God forbid, that by the use of that word I should be supposed to reflect on the members of those respectable republican communities which did exist in Europe before the French revolution. That revolution has spared many monarchies, but it has spared no republic within the sphere of its destructive energy. One republic only now exists in the world—a republic of English blood, which was originally composed of republican societies, under the protection of a monarchy, which had therefore no great and perilous change in their internal constitution to effect, and of which (I speak it with pleasure and pride) the inhabitants, even in the convulsions of a moſt deplorable separation, displayed the humanity as well as valour, which, I trust, I may say they inherited from their forefathers.

" Nor do I mean by the use of the word " republican," to confound this execrable faction with all those who, in the liberty of private speculation, may prefer a republican form of government. I own, that after much reflexion, I am not able to conceive an error more gross than that of those who believe in the possibility of erecting a republic in any of the old monarchical countries of Europe, who believe that in such countries an elective supreme magistracy can produce any thing but a succession of stern tyrannies and bloody civil wars. It is a supposition which is belied by all experience, and which

betrays the greatest ignorance of the first principles of the constitution of society.—It is an error which has a false appearance of superiority over vulgar prejudice; it is therefore too apt to be attended with the most criminal rashness and presumption, and too easy to be inflamed into the most immoral and antisocial fanaticism. But as long as it remains a mere quiescent error, it is not the proper subject of moral disapprobation.

"If then, gentlemen, such a faction, falsely calling itself republican, exists in France, let us consider whether this ode speaks their sentiments, describes their character, agrees with their views. Trying it by the principle I have stated, I think you will have no difficulty in concluding, that it is agreeable to the general plan of this publication, to give an historical and satirical view of the Brutuses and brutes of the republic—of those who assumed and disgraced the name of Brutus*, and who, under that name, sat as judges in their mock tribunals with pistols in their girdles, to anticipate the office of the executioner on those unfortunate men whom they treated as rebels, for resistance to Roberspierre and Couthon.

"I now come to shew you, that this ode cannot represent the opinions of Mr. PELTIER.—He is a French royalist.—He has devoted his talents to the cause of his king—For that cause he has sacrificed his fortune and hazarded his life. For that cause he is proscribed and exiled from his country. I could easily conceive powerful topics of royalist invective against Buonaparté—And if Mr. PELTIER had called upon Frenchmen by the memory of St. Louis and Henry the Great, by the memory of that illustrious family which reigned over them for seven centuries, and with whom all their martial renown

* Citizen Brutus, President of the Military Commission at Marseilles, in January 1794.

and

and literary glory are so closely connected; if he had abjured them by the spotless name of that Louis XVI. the martyr of his love for his people, which scarce a man in France can now pronounce but in the tone of pity and veneration;—if he had *thus* called upon them to change their useless regret and their barren pity into generous and active indignation; if he had reproached the conquerors of Europe with the disgrace of being the slaves of an upstart stranger; if he had brought before their minds the contrast between their country under her ancient monarchs, the source and model of refinement in manners and taste, and since their expulsion the scourge and the opprobrium of humanity; if he had exhorted them to drive out their ignoble tyrants, and to restore their native sovereign; I should then have recognized the voice of a royalist—I should have recognized language that must have flowed from the heart of Mr. PELTIER, and I should have been compelled to acknowledge that it was pointed against Buonaparté.

"These, or such as these, must have been the topics of a royalist, if he had published an invective against the First Consul. But instead of these, or similar topics, what have we in this ode? On the supposition that it is the invective of a royalist, how is it to be reconciled to common sense? What purpose is it to serve? To whom is it addressed? To what interests does it appeal? What passions is it to rouze? If it be addressed to royalists, then I request, gentlemen, that you will carefully read it, and tell me whether, on that supposition, it can be any thing but the ravings of insanity, and whether a commission of lunacy be not a proceeding more fitted to the author's case, than a conviction for a libel. On that supposition, I ask you whether it does not amount, in substance, to such an address as the following: 'Frenchmen!

men! royalists! I do not call upon you to avenge the murder of your innocent sovereign, the butchery of your relations and friends, the disgrace and oppression of your country! I call upon you by the hereditary right of Barras, transmitted through a long series of ages, by the beneficent government of Merlin and Reubell, whose worthy successors of Charlemagne, whose authority was as mild as it was lawful—I call upon you to revenge on *Buonaparté* the deposition of that directory who condemned the far greater part of yourselves to beggary and exile, who covered France with bastiles and scaffolds; who doomed the most respectable remaining members of their community, the Pichegrus, the Barbé Marbois, the Barthelemis, to a lingering death in the pestilential wilds of Guiana.—I call upon you to avenge on Buonaparté the cause of those Councils of Five Hundred, or of Two Hundred, of elders or of youngsters, those disgusting and nauseous mockeries of representative assemblies; those miserable councils which sycophant sophists had converted into machines for fabricating degrees of proscription and confiscation? which not only proscribed unborn thousands, but, by a refinement and innovation in rapine, visited the sins of the children upon the fathers and beggared parents, not for the offences but for the misfortunes of their sons. I call upon you to restore this directory and these councils, and all this horrible profanation of the name of a republic, and to punish those who delivered you from them. I exhort you to reverence the den of these banditti as '*the sanctuary of the laws*,' and to lament the day in which this intolerable nuisance was abated as '*an unfortunate day*.' Last of all, I exhort you once more to follow that deplorable chimera—the first lure that led you to destruction—the sovereignty of the people—though I know

and you have bitterly felt, that you never were so much slaves, in fact, as since you have been sovereigns in theory!'

"Let me ask Mr. Attorney-general, whether, upon his supposition, I have not given you a faithful translation of this ode; and I think I may safely repeat, that, if this be the language of a royalist addressed to royalists, it must be the production of a lunatic. But on my supposition, every thing is natural and consistent. You have the sentiments and language of a jacobin—It is therefore probable, if you take it as an historical republication of a jacobin piece—It is just, if you take it as a satirical representation of jacobin opinions and projects.

"Perhaps it will be said, that this is the production of a royalist writer, who assumes a republican disguise to serve royalist purposes; but if my learned friend chooses that supposition, I think an equal absurdity returns upon him in another shape. We must then suppose it to be intended to excite republican discontent and insurrection against Buonapartè. It must then be taken as addressed to republicans.—Would Mr. PELTIER, in that case, have disclosed his name as the publisher?—Would he not much rather have circulated the ode in the name of Chenier, without prefixing his own, which was more than sufficient to warn his jacobinical readers against all his counsels and exhortations. If he had circulated it under the name of Chenier only, he would indeed have hung out republican colors; but by prefixing his own, he appears without disguise. You must suppose him then to say, 'Republicans! I, your mortal enemy for fourteen years, whom you have robbed of his all, whom you have forbidden to revisit his country under pain of death, who, from the beginning of the revolution, unceasingly poured ridicule upon your follies, and

and exposed your crimes to detestation, who in the cause of my unhappy sovereign braved your daggers for three years, and who escaped, almost by miracle, from your assassins in September, who has since been constantly employed in warning other nations by your example, and in collecting the evidence upon which history will pronounce your condemnation; I who at this moment deliberately choose exile and honorable poverty, rather than give the slightest mark of external compliance with your abominable institutions; I your most irreconcilable and indefatigable enemy, offer you counsel which you know can only be a share into which I expect you to fall, though by the mere publication of my name I have sufficiently forewarned you that I can have no aim but that of your destruction.'

"I ask you again, gentlemen, is this common sense? Is it not as clear, from the name of the author, that it is not addressed to jacobins, as, from the contents of the publication, that it is not addressed to royalists? It may be the genuine work of Chenier, for the topics are such as he would employ—It may be a satire on jacobinism, for the language is well adapted to such a composition—but it cannot be a royalist's invective against Buonaparté, intended by him to stir up either royalists or republicans to the destruction of the First Consul.

"I cannot conceive it to be necessary that I should minutely examine this poem to confirm my construction. There are one or two passages on which I shall make a few observations. The first is the contrast between the state of England and that of France, of which an ingenious friend has favored me with a translation, which I shall take the liberty of reading to you.

Her

Her glorious fabric England rears
On law's fix'd base alone;
Law's guardian pow'r while each reveres,
England! thy people's freedom fears
No danger from the throne.

For there, before all-mighty law,
High birth, high place, with pious awe,
In rev'rend homage bend:
There man's free spirit, unconstrain'd
Exults, in man's best rights maintain'd;
Rights, which by ancient valor gain'd,
From age to age descend.

Britons, by no base fear dismay'd,
May power's worst acts arraign;
Does tyrant force their rights invade?
They call on law's impartial aid,
Nor call that aid in vain.

Hence, of her sacred charter proud,
With ev'ry earthly good endow'd,
O'er subject seas unfurl'd,
Britannia waves her standard wide,
Hence, sees her freighted navies ride
Up wealthy Thames' majestic tide,
The wonder of the world.

"Here at first sight, you may perhaps think that the consistency of the jacobin character is not supported, that the republican disguise is thrown off, that the royalist stands unmasked before you—but, on more consideration, you will find that such an inference would be too hasty. The leaders of the revolution are now reduced to envy that British constitution, which, in the infatuation of their presumptuous ignorance, they once rejected with scorn. They are now slaves (as they themselves confess) because twelve years ago they did not believe Englishmen

Englishmen to be free. They cannot but see that England is the only popular government in Europe; and they are compelled to pay a reluctant homage to the justice of English principles. The praise of England is too striking a satire on their own government to escape them; and I may accordingly venture to appeal to all those who know any thing of the political circles of Paris, whether such contrasts between France and England as that which I have read to you, be not the most favorite topics of the opponents of Buonaparté.—But in the very next stanza,

> Cependant, encore affligée
> Par l'odieuse hérédité,
> Londres de titres surchargée,
> Londres n'a pas l'ÉGALITÉ;

you see that though they are forced to render an unwilling tribute to our liberty, they cannot yet renounce all their fantastic and deplorable chimeras. They endeavour to make a compromise between the experience on which they cannot shut their eyes, and the wretched systems to which they still cling. Fanaticism is the most incurable of all mental diseases: because, in all its forms, religious, philosophical, or political, it is distinguished by a sort of mad contempt for *experience*, which alone can correct the errors of practical judgment. And these democratical fanatics still speak of the odious principle of 'hereditary government.' They still complain that we have not '*equality*.' They know not that this odious principle of inheritance is our bulwark against tyranny; that if we had their pretended equality we should soon cease to be the objects of their envy. These are the sentiments which you would naturally expect from half-cured lunatics. But once more I ask you, whether they can be the sentiments of Mr. PELTIER? Would he complain

complain that we have too much monarchy, or too much of what they call aristocracy? If he has any prejudices against the English government, must they not be of an entirely opposite kind?

"I have only one observation more to make on this poem. It relates to the passage which is supposed to be an incitement to assassination. In my way of considering the subject, Mr. PELTIER is not answerable for that passage, whatever its demerits may be. It is put into the mouth of a jacobin; and it will not, I think, be affirmed, that if it were an incitement to assassinate, it would be very unsuitable to his character. Experience, and very recent experience, has abundantly proved how widely the French revolution has blackened men's imaginations, what a daring and desperate cast it has given to their characters, how much it has made them regard the most extravagant projects of guilt as easy and ordinary expedients; and to what a horrible extent it has familiarized their minds to crimes which before were only known among civilized nations by the history of barbarous times, or as the subject of poetical fiction. But thank God, gentlemen, we in England have not learned to charge any man with inciting assassination—not even a member of that atrocious sect who have revived political assassination in Christendom—except when we are compelled to do so by irresistible evidence. Where is that evidence here? In general, it is immoral because it is indecent to speak with levity, still more to anticipate with pleasure, the destruction of any human being. But between this immorality and the horrible crime of inciting to assassination, there is a wide interval indeed. The real or supposed author of this ode gives you to understand that he would hear with no great sorrow of the destruction of the First Consul. But surely the publi-

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cation of that sentiment is very different from an exhortation to assassinate.

"But, says my learned friend, why is the example of Brutus celebrated? Why are the French reproached with their baseness in not copying that example? Gentlemen, I have no judgment to give on the act of Marcus Brutus—I rejoice that I have not—I should not dare to condemn the acts of brave and vitruous men in extraordinary and terrible circumstances, and which have been, as it were, consecrated by the veneration of so many ages —still less should I dare to weaken the authority of the most sacred rules of duty, by praises which would be immoral, even if the acts themselves were in some measure justified by the awful circumstances under which they were done. I am not the panegyrist of 'those instances of doubtful public spirit at which morality is perplexed, reason is staggered, and from which affrighted nature recoils *.'

"But whatever we may think of the act of Brutus, surely my learned friend will not contend that every allusion to it, every panegyric on it, which has appeared for eighteen centuries, in prose and verse, is an incitement to assassination. From the *conspicuæ divina Philippica famæ*, down to the last school-boy declamation, he will find scarce a work of literature without such allusions, and not very many without such panegyrics.—I must say that he has construed this ode more like an attorney-general than a critic in poetry. According to his construction, almost every fine writer in our language is a preacher of murder.

"Having said so much on the first of these supposed libels, I shall be very short on the two that remain—the verses ascribed to a Dutch patriot, and the parody of the

* Mr. Burke's Works, Vol. IV. p. 427.

speech

speech of *Lepidus*. In the first of these, the piercing eye of Mr. Attorney-general has again discovered an incitement to assassinate—the most learned incitement to assassinate that ever was addressed to such ignorant ruffians as are most likely to be employed for such nefarious purposes!—An obscure allusion, to an obscure and perhaps fabulous part of Roman history, to the supposed murder of Romulus, about which none of us know anything, and of which the jacobins of Paris and Amsterdam probably never heard.—But the *Apotheosis*:—Here my learned friend has a little forgotten himself—He seems to argue as if *Apotheosis* always presupposed death. But he must know, that *Augustus*, and even *Tiberius* and *Nero* were deified during their lives, and he cannot have forgotten the terms in which one of the court poets of Augustus speaks of his master's divinity—

———Præsens divus habebitur
Augustus adjectis Britannis
Imperio.—

"If any modern rival of Augustus should choose that path to Olympus, I think he will find it more steep and rugged than that by which Pollux and Hercules climbed to the ethereal towers, and that he must be content with purpling his lips with burgundy on earth, as he has very little chance of purpling them with nectar among the gods.

"The utmost that can seriously be made of this passage is, that it is a wish for a man's death. I repeat that I do not contend for the decency of publicly declaring such wishes, or even for the propriety of entertaining them: but the distance between such a wish and a persuasive to murder, is immense. Such a wish for a man's death is very often little more than a strong, though I admit not

a very decent, way of expressing detestation for his character.

"But without pursuing this argument any farther, I think myself entitled to apply to these verses the same reasoning which I have already applied to the first supposed libel on Buonaparté. If they be the real composition of a pretended Dutch patriot, Mr. PELTIER may republish them innocently—If they be a satire on such pretended Dutch patriots, they are not a libel on Buonaparté.—Granting, for the sake of argument, that they did contain a serious exhortation to assassinate, is there any thing in such an exhortation inconsistent with the character of these pretended patriots?

"They who were disaffected to the mild and tolerant government of their flourishing country because it did not exactly square with all their theoretical whimsies; they who revolted from that administration as tyrannical, which made Holland one of the wonders of the world for protected industry, for liberty of action and opinion, and for a prosperity which I may venture to call the greatest victory of man over hostile elements; they who called in the aid of the fiercest tyrants that Europe ever saw, who served in the armies of Robespierre, under the impudent pretext of giving liberty to their country, and who have, finally, buried in the same grave its liberty, its independence, and perhaps its national existence; they are not men entitled to much tenderness from a political satirist, and he will scarcely violate dramatic propriety if he impute to them any language, however criminal and detestable. They who could not brook the authority of their old, lazy, good-natured government, are not likely to endure with patience the yoke of that stern domination which they have brought upon themselves, and which,

which, as far as relates to them, is only the just punishment of their crimes. They who call in tyrants to establish liberty, who sacrifice the independence of their country under pretence of reforming its internal constitution, are capable of every thing.

"I know nothing more odious than their character, unless it be that of those who invoked the aid of the oppressors of Switzerland to be the deliverers of Ireland! Their guilt has, indeed, peculiar aggravations. In the name of liberty they were willing to surrender their country into the hands of tyrants, the most lawless, faithless, and merciless that ever scourged Europe; who, at the very moment of their negotiation, were covered with the blood of the unhappy Swiss, the martyrs of real independence and of real liberty. Their success would have been the destruction of the only free community remaining in Europe—of England, the only bulwark of the remains of European independence. Their means were the passions of an ignorant and barbarous peasantry, and a civil war, which could not fail to produce all the horrible crimes and horrible retaliations of the last calamity that can befal society—a servile revolt. They sought the worst of ends by the most abominable of means. They laboured for the subjugation of the world at the expence of crimes and miseries which men of humanity and conscience would have thought too great a price for the deliverance of mankind.

"The last of these supposed libels, is the Parody on the speech of Lepidus, in the fragments of Sallust. It is certainly a very ingenious and happy parody of an original, attended with some historical obscurity and difficulty, which it is no part of our present business to examine. This parody is said to have been clandestinely placed among the papers of one of the most amiable and

respectable men in France, M. Camille Jordan, in order to furnish a pretext for involving that excellent person in a charge of conspiracy. This is said to have been done by a spy of *Fouché*. Now, gentlemen, I take this to be a satire on *Fouché*, on his manufacture of plots—on his contrivances for the destruction of innocent and virtuous men—and I should admit it to be a libel on *Fouché* if it were possible to libel him. I own that I should like to see Fouché appear as a plaintiff, seeking reparation for his injured character, before any tribunal, safe from his fangs, where he had not the power of sending the judges to Guiana or Madagascar. It happens that we know something of the history of *Mr. Fouché*, from a very credible witness against him—from himself. You will perhaps excuse me for reading to you some passages of his letters in the year 1793, from which you will judge, whether any satire can be so severe as the portrait he draws of himself:

'Convinced that there are no innocent men in this infamous city,' (the unhappy city of Lyons,) 'but those who are oppressed and loaded with irons by the assassins of the people,' (he means the murderers who were condemned to death for their crimes) 'we are on our guard against *the tears of repentance!* nothing can disarm our severity.—They have not yet *dared* to solicit the repeal of your first decree for the ANNIHILATION OF THE CITY OF LYONS! but scarcely any thing has yet been done to carry it into execution.' (Pathetic!) 'The demolitions are too slow. More rapid means are necessary to republican impatience. The explosion of the mine, and the devouring activity of the flames, can alone adequately represent the omnipotence of the people.' (Unhappy populace, always the pretext, the instrument and the victim of political crimes!) 'Their will cannot be check-

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ed like that of tyrants—It ought to have the effects of thunder!' "The next specimen of this worthy gentleman which I shall give, is in a speech to the jacobin club of Paris, on the 21st of December, 1793, by his worthy colleague in the mission to Lyons, *Collot d'Herbois*:

'We are accused,' (you, gentlemen, will soon see how unjustly,) 'of being cannabals, men of blood: but it is in counter-revolutionary petitions, hawked about for signature by aristocrats, that this charge is made against us. They examine with the most scrupulous attention how the counter-revolutionists are put to death, and they affect to say, that they are not killed at one stroke.' (He speaks for himself and his colleague *Fouché*, and one would suppose that he was going to deny the fact—But nothing like it.) 'Ah, jacobins, did *Chalier* die at the first stroke? &c.'—(This Chalier was the Marat of Lyons.) 'A drop of blood poured from generous veins goes to my heart,' (humane creature!) 'but I have no pity for conspirators.' (He however proceeds to state a most undeniable proof of his compassion.) 'We caused two hundred to be shot at once, and it is charged upon us as a crime!' (Astonishing! that such an act of humanity should be called a crime!) 'They do not know, that *it is a proof of our sensibility!* When twenty criminals are guillotined, the last of them dies twenty deaths.—But these two hundred conspirators perished at once. They speak of sensibility—we also *are full of sensibility!* The JACOBINS HAVE ALL THE VIRTUES! They are *compassionate, humane, generous!*' (This is somewhat hard to be understood, but it is perfectly explained by what follows) '*but they reserve these sentiments for the patriots* who are their brethren, which the aristocrats never will be.'

"The only remaining document with which I shall trouble you, is a letter from *Fouché* to his amiable colleague *Collot d'Herbois*, which, as might be expected in a confidential communication, breathes all the native tenderness of his soul:—'Let us be *terrible*, that we may run no risque of being feeble or *cruel!*—Let us annihilate in our wrath, at a single blow, *all* rebels, *all* conspiratots, *all* traitors,' (comprehensive words in his vocabulary) 'to spare ourselves the pain, the long agony, of punishing like kings!' (Nothing but philanthropy in this worthy man's heart.) 'Let us exercise justice after the example of nature, let us avenge ourselves like a people, let us strike like the thunderbolt, and let even the ashes of our enemies disappear from the soil of *liberty!* Let the perfidious and *ferocious* English be attacked from every side, let the whole republic form a volcano to pour devouring lava upon them; may the infamous island which produced *these monsters, who no longer belong to humanity*, be for ever buried under the waves of the ocean! Farewell, *my friend!* Tears of joy stream from my eyes,' (we shall soon see for what) '*they deluge my soul.*'

"Then follows a little postcript, which explains the cause of this excessive joy, so hyperbolical in its language, and which fully justifies the indignation of the humane writer against the 'ferocious English,' who are so stupid and so cruel as never to have thought of a benevolent massacre, by way of sparing themselves the pain of punishing individual criminals.

'*We have only one way of celebrating victory. We send this evening two hundred and thirteen rebels to be shot!*'

"Such, gentlemen, is *M. Fouché*, who is said to have procured this parody to be mixed with the papers of my excellent friend *Camille Jordan*, to serve as a pretext for his

his destruction. Fabricated plots are among the most usual means of such tyrants for such purposes: and if Mr. PELTIER intended to libel (shall I say?) *Fouché* by this composition, I can easily understand both the parody and the history of its origin—But if it be directed against Buonaparté to serve royalist purposes, I must confess myself wholly unable to conceive why Mr. PELTIER should have stigmatized his work, and deprived it of all authority and power of persuasion, by prefixing to it the infamous name of *Fouché*.

"On the same principle I think one of the observations of my learned friend, on the title of this publication, may be retorted on him—He has called your attention to the title, '*L'Ambigu, ou Variétés atroces et amusantes.*' Now, gentlemen, I must ask, whether, had these been Mr. PELTIER's own invectives against Buonaparté, he would himself have branded them as '*atrocious?*'—But if they be specimens of the opinions and invectives of a French faction, the title is very natural, and the epithets are perfectly intelligible—indeed I scarce know a more appropriate title for the whole tragi-comedy of the revolution than that of 'atrocious and amusing varieties.'

"My learned friend has made some observations on other parts of this publication, to shew the spirit which animates the author—but they do not seem to be very material to the question between us. It is no part of my case that Mr. PELTIER has not spoken with more unpoliteness, with some flippancy, with more severity than my learned friend may approve, of factions and of administrations in France. Mr. PELTIER cannot love the revolution, or any government that has grown out of it and maintains it. The revolutionists have destroyed his family—they have seized his inheritance—they have beg-

gared, exiled, and proscribed himself. If he did not detest them he would be unworthy of living, and he would be a base hypocrite if he were to conceal his sentiments But I must again remind you, that this is not an information for not sufficiently honoring the French revolution for not shewing sufficient reverence for the Consular government. These are no crimes among us. England is not yet reduced to such an ignominious dependence. Our hearts and consciences are not yet in the bonds of so wretched a slavery. This is an information for a libel on Buonaparté, and if you believe the principal intention of Mr. PELTIER to have been to republish the writings or to satirize the character of other individuals, you must acquit him of a libel on the First Consul.

"Here, gentlemen, I think I might stop, if I had only to consider the defence of Mr. PELTIER. I trust that you are already convinced of his innocence. I fear I have exhausted your patience, as I am sure I have very nearly exhausted my own strength. But so much seems to me to depend on your verdict, that I cannot forbear from laying before you some considerations of a more general nature.

"Believing as I do that we are on the eve of a great struggle, that this is only the first battle between reason and power—that you have now in your hands, committed to your trust, the only remains of free discussion in Europe, now confined to this kingdom; addressing you, therefore, as the guardians of the most important interests of mankind; convinced that the unfettered exercise of reason depends more on your present verdict than on any other that was ever delivered by a jury, I cannot conclude without bringing before you the sentiments and examples of our ancestors in some of those awful and perilous situations by which divine Providence has in

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former ages tried the virtue of the English nation. We are fallen upon times in which it behoves us to strengthen our spirits by the contemplation of great examples of constancy. Let us seek for them in the annals of our forefathers.

" The reign of Queen Elizabeth may be considered as the opening of the modern history of England, especially in its connexion with the modern system of Europe, which began about that time to assume the form that it preserved till the French revolution. It was a very memorable period, of which the maxims ought to be engraven on the head and heart of every Englishman. Philip II. at the head of the greatest empire then in the world, was openly aiming at universal domination, and his project was so far from being thought chimerical by the wisest of his contemporaries, that in the opinion of the great *Duc de Sully* he must have been successful, " if by " a most singular combination of circumstances, he had " not at the same time been resisted by two such strong " heads as those of Henry IV. and Queen Elizabeth." To the most extensive and opulent dominions, the most numerous and disciplined armies, the most renowned captains, the greatest revenue, he added also the most formidable power over opinion. He was the chief of a religious faction, animated by the most atrocious fanaticism, prepared to second his ambition by rebellion, anarchy, and regicide, in every protestant state. Elizabeth was among the first objects of his hostility.—That wise and magnanimous princess placed herself in the front of the battle for the liberties of Europe. Though she had to contend at home with his fanatical faction, which almost occupied Ireland, which divided Scotland, and was not of contemptible strength in England, she aided the oppressed inhabitants of the Netherlands in their just

and glorious resistance to his tyranny; she aided Henry the Great in suppressing the abominable rebellion which anarchical principles had excited, and Spanish arms had supported in France, and after a long reign of various fortune, in which she preserved her unconquered spirit through great calamities, and still greater dangers, she at length broke the strength of the enemy, and reduced his power within such limits as to be compatible with the safety of England, and of all Europe. Her only effectual ally was the spirit of her people, and her policy flowed from that magnanimous nature which in the hour of peril teaches better lessons than those of cold reason. Her great heart inspired her with a higher and nobler wisdom—which disdained to appeal to the low and sordid passions of her people even for the protection of their low and sordid interests, because she knew, or rather she felt, that these are effeminate, creeping, cowardly, short-sighted passions, which shrink from conflict even in defence of their own mean objects. In a righteous cause she roused those generous affections of her people which alone teach boldness, constancy, and foresight, and which are therefore the only safe guardians of the lowest as well as the highest interests of a nation. In her memorable address to her army, when the invasion of the kingdom was threatened by Spain, this woman, of heroic spirit, disdained to speak to them of their ease and their commerce, and their wealth and their safety! No! She touched another chord.—She spoke of their national honor, of their dignity as Englishmen, of "*the foul scorn* "*that Parm or Spain* SHOULD DARE *to invade the borders* "*of her realms!*" She breathed into them those grand and powerful sentiments which exalt vulgar men into heroes, which led them into the battle of their country armed with holy and irresistible enthusiasm, which even cover

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with their shield all the ignoble interests that base calculation and cowardly selfishness tremble to hazard, but shrink from defending. A sort of prophetic inſtinct, if I may so speak, seems to have revealed to her the importance of that great inſtrument for rousing and guiding the minds of men, of the effects of which she had no experience; which, since her time, has changed the condition of the world; but which few modern statesmen have thoroughly understood or wisely employed; which is no doubt connected with many ridiculous and degrading details, which has produced, and which may again produce, terrible mischiefs; but of which the influence must after all be considered as the most certain effect and the most efficacious cause of civilization, and which, whether it be a blessing or a curse, is the most powerful engine that a politician can move—I mean the Press. It is a curious fact, that, in the year of the Armada, Queen Elizabeth caused to be printed the firſt gazettes that ever appeared in England; and I own when I consider that this mode of rousing a national spirit was then absolutely unexampled, that she could have no assurance of its efficacy from the precedents of former times, I am disposed to regard her having recourse to it as one of the most sagacious experiments, one of the greatest discoveries of political genius, one of the most striking anticipations of future experience, that we find in history. I mention it to you, to justify the opinion that I have ventured to state, of the close connexion of our natural spirit with our press, and even our periodical press. I cannot quit the reign of Elizabeth without laying before you the maxims of her policy, in the language of the greatest and wiseſt of men:—Lord Bacon, in one part of his discourse on her reign, speaks thus of her support of Holland: "But let me reſt upon the honorable and continual aid

and

" and relief she hath given to the distressed and desolate " people of the Low Countries; a people recommended " unto her by ancient confederacy and daily interourse, " by their cause so innocent, and their fortune so la- " mentable!"—In another passage of the same discourse, he thus speaks of the general system of her foreign policy, as the protector of Europe, in words too remarkable to require any commentary: " Then it is her government, " and her government alone, that hath been the sconce " and fort of all Europe, which hath lett this proud na- " tion from over-running all. If any state be yet free " from his factions erected in the bowels thereof; if there " be any state wherein this faction is erected that it is " not yet fired with civil troubles; if there be any state " under his protection that enjoyeth moderate liberty, " upon whom he tyrannizeth not; it is the mercy of this " renowned queen that standeth between them and their " misfortunes!"

" The next great conspirator against the rights of men and of nations, against the security and independence of all European ſtates, againſt every kind and degree of civil and religious liberty, was Louis XIV. In his time the character of the English nation was the more remarkably displayed, because it was counteracted by an apostate and perfidious government.—During great part of his reign, you know that the throne of England was filled by princes who deserted the cause of their country and of Europe, who were the accomplices and the tools of the oppressor of the world, who were even so unmanly, so unprincely, so base, as to have sold themselves to his ambition; who were content that he should enslave the continent, if he enabled them to enslave Great-Britain. These princes, traitors to their own royal dignity and to the feelings of the generous people whom they

they ruled, preferred the condition of the firſt ſlave of Louis XIV. to the dignity of the firſt freeman of England, yet, even under theſe princes, the feelings of the people of this kingdom were displayed on a moſt memorable occaſion towards foreign ſufferers and foreign oppreſſors. The revocation of the edict of Nantz threw fifty thouſand French proteſtants on our ſhores.—They were received as the victims of tyranny ever will be in this land, which ſeems chosen by Providence to be the home of the exile—the refuge of the oppreſſed. They were welcomed by a people high-ſpirited as well as humane, who did not inſult them by clandeſtine charity—who did not give alms in ſecret, leſt their charity ſhould be detected by the neighbouring tyrants! No! they were publicly and nationally welcomed and relieved. They were bid to raiſe their voice againſt their oppreſſor, and to proclaim their wrongs to all mankind. They did ſo. They were joined in the cry of juſt indignation by every Engliſhman worthy of the name.—It was a fruitful indignation which ſoon produced the ſucceſsful reſiſtance of all Europe to the common enemy. Even then, when Jeffries diſgraced the bench which his lordſhip now adorns, no refugee was deterred by proſecution for libel from giving vent to his feelings, from arraigning the oppreſſor in the face of all Europe.

"During this ignominious period of our hiſtory, a war aroſe on the continent; which cannot but preſent itſelf to the mind on ſuch an occaſion as this;—the only war that was ever made on the avowed ground of attacking a free preſs. I ſpeak of the invaſion of Holland by Louis XIV. The liberties which the Dutch gazettes had taken in diſcuſſing his conduct were the ſole cauſe of this very extraordinary and memorable war, which was of ſhort duration, unprecedented in its avowed principle, and moſt

most glorious in its event for the liberties of mankind. That republic, at all times so intereſting to Englishmen, —in the worst times of both countries our brave enemies, —in their best times our most faithful and valuable friends—was then charged with the defence of a free press against the oppressor of Europe, as a sacred trust for the benefit of all generations. They felt the sacredness of the deposit, they felt the dignity of the station in which they were placed, and though deserted by the Un-English government of England, they asserted their own ancient character and drove out the great armies and great captains of the oppressor with defeat and disgrace. Such was the result of the only war hitherto avowedly undertaken to oppress a free country, because she allowed the free and public exercise of reason:—and may the God of justice and liberty grant that such may ever be the result of wars made by tyrants against the rights of mankind, especially against that right which is the guardian of every other.

"This war, Gentlemen, had the effect of raising up from obscurity the great Prince of Orange, afterwards King William III.—the deliverer of Holland, the deliverer of England, the deliverer of Europe,—the only hero who was distinguished by such a happy union of fortune and virtue that the objects of his ambition were always the same with the interests of humanity; perhaps, the only man who devoted the whole of his life exclusively to the service of mankind. This most illustrious benefactor of Europe—this "hero without vanity or passion," as he has been justly and beautifully called by a venerable prelate * who never made a step towards greatness without securing or advancing liberty, who had been made Stadtholder of Holland for the salvation of his own country,

* Dr. Shipley, Bishop of St. Asaph.

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was soon after made King of England for the deliverance of ours.—When the people of Great Britain had once more a government worthy of them, they returned to the feelings and principles of their ancestors, and resumed their former station and their former duties as protectors of the independence of nations. The people of England, delivered from a government which disgraced, oppressed, and betrayed them, fought under William as their forefathers had fought under Elizabeth, and after an almost uninterrupted struggle of more than twenty years, in which they were often abandoned by fortune, but never by their own constancy and magnanimity, they at length once more defeated those projects of guilty ambition, boundless aggrandizement, and universal domination, which had a second time threatened to overwhelm the whole civilized world. They rescued Europe from being ſwallowed up in the gulph of extensive empire, which the experience of all times points out as the grave of civilization, where men are driven by violent conquest and military oppression into lethargy and slavishness of heart, where after their arts have perished with the mental vigour from which they spring, they are plunged by the combined power of effeminacy and ferocity into irreclaimable and hopeless barbarism. Our ancestors eſtablished the safety of their own country by providing for that of others, and rebuilt the European system upon such firm foundations, that nothing less than the tempest of the French revolution could have shaken it.

"This arduous struggle was suspended for a short time by the peace of Ryswick. The interval between that treaty and the war of the succession enables us to judge how our ancestors acted in a very peculiar situation which requires maxims of policy very different from those which usually govern states. The treaty which they had

concluded was in truth and substance only a truce. The ambition and the power of the enemy were such as to render real peace impossible; and it was perfectly obvious that the disputed succession of the Spanish monarchy would soon render it no longer practicable to preserve even the appearance of amity.—It was desirable, however, not to provoke the enemy by unseasonable hostility; but it was still more desirable, it was absolutely necessary, to keep up the national jealousy and indignation against him who was soon to be their open enemy. It might naturally have been apprehended that the press might have driven into premature war a prince who not long before had been violently exasperated by the press of another free country. I have looked over the political publications of that time with some care, and I can venture to say, that at no period were the system and projects of Louis XIV. animadverted on with more freedom and boldness than during that interval. Our ancestors, and the heroic prince who governed them, did not deem it wise policy to disarm the national mind for the sake of prolonging a truce. They were both too proud and too wise to pay so great a price for so small a benefit.

"In the course of the eighteenth century, great change took place in the state of political discussion in this country—I speak of the multiplication of newspapers. I know that newspapers are not very popular in this place, which is, indeed, not very surprising, because they are known only by their faults. Their publishers come here only to receive the chastisement due to their offences. With all their faults, I own, I cannot help feeling some respect for whatever is a proof of the increased curiosity and increased knowledge of mankind, and I cannot help thinking, that if somewhat more indulgence and consider-

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ation were shewn for the difficulties of their situation, it might prove one of the best correctives of their faults, by teaching them that self-respect which is the best security for liberal conduct towards others. But however that may be, it is very certain that the multiplication of these channels of popular information has produced a great change in the state of our domestic and foreign politics. At home, it has, in truth, produced a gradual revolution in our government. By increasing the number of those who exercise some sort of judgment on public affairs, it has created a substantial democracy, infinitely more important than those democratical forms which have been the subject of so much contest. So that I may venture to say, England has not only in its *forms* the most democratical government that ever existed in a great country, but in *substance*, has the most democratical government that ever existed in *any* country; —if the most *substantial* democracy be that state in which the greatest number of men feel an interest and express an opinion upon political questions, and in which the greatest number of judgments and wills concur in influencing public measures.

"The same circumstance gave great additional importance to our discussion of continental politics. That discussion was no longer, as in the preceding century, confined to a few pamphlets, written and read only by men of education and rank, which reached the multitude very slowly and rarely.—In newspapers an almost daily appeal was made, directly or indirectly, to the judgment and passions of almost every individual in the kingdom upon the measures and principles not only of his own country, but of every state in Europe. Under such circumstances, the tone of these publications in speaking of foreign governments became a matter of importance.

You will excuse me, therefore, if, before I conclude, I remind you of the general nature of their language on one or two very remarkable occasions, and of the boldness with which they arraigned the crimes of powerful sovereigns, without any check from the laws and magistrates of their own country. This toleration, or rather this protection, was too long and uniform to be accidental. I am, indeed, very much mistaken if it be not founded upon a policy which this country cannot abandon without sacrificing her liberty and endangering her national existence.

"The first remarkable instance which I shall chuse to state of the unpunished and protected boldness of the English press, of the freedom with which they animadverted on the policy of powerful sovereigns, is the partition of Poland in 1772; an act not perhaps so horrible in its means, nor so deplorable in its *immediate* effects, as some other atrocious invasions of national independence which have followed it—but the most abominable in its general tendency and ultimate consequences of any political crime recorded in history, because it was the first practical breach in the system of Europe, the first example of atrocious robbery perpetrated on unoffending countries, which has been since so liberally followed and which has broken down all the barriers of habit and principle which guarded defenceless states. The perpetrators of this atrocious crime were the most powerful sovereigns of the continent, whose hostility it certainly was not the interest of Great Britain wantonly to incur. They were the most illustrious princes of their age, and some of them were doubtless entitled to the highest praise for their domestic administration, as well as for their brilliant qualities which distinguished their character. But none of these circumstances, no dread of their resentment, no

admiration of their talents, no consideration for their rank, silenced the animadversion of the English press. Some of you remember, all of you know, that a loud and unanimous cry of reprobation and execration broke out against them from every part of this kingdom. It was perfectly uninfluenced by any considerations of our own mere national interest, which might perhaps be supposed to be rather favourably affected by that partition. It was not, as in some other countries, the indignation of rival robbers, who were excluded from their share of the prey —it was the moral anger of disinterested spectators against atrocious crimes, the gravest and the most dignified moral principle which the God of Justice has implanted in the human heart, that of which the dread is the only restraint on the actions of powerful criminals, and of which the promulgation is the only punishment that can be inflicted on them. It is a restraint which ought not to be weakened —it is a punishment which no good man can desire to mitigate.

"That great crime was spoken of as it deserved in England. Robbery was not described by any courtly circumlocutions. Rapine was not called policy—nor was the oppression of an innocent people termed a *mediation* in their domeſtic differences. No proſecutions, no criminal informations followed the liberty and the boldness of the language then employed. No complaints even appear to have been made from abroad—much less any inſolent menaces againſt the free conſtitution which protected the Engliſh preſs. The people of England were too long known throughout Europe for the proudeſt potentate to expect to silence our press by such means.

"I pass over the second partition of Poland in 1792—you all remember what passed on that occaſion, the univerſal abhorrence expreſſed by every man and every wri-

ter of every party, the succours that were publicly preparing by large bodies of individuals of all parties for the oppressed Poles—I hasten to the final dismemberment of that unhappy kingdom, which seems to me the moſt ſtriking example in our history of the habitual, principled, and deeply rooted forbearance of those who administer the law towards political writers.

"We were engaged in the most extensive, bloody, and dangerous war that this country ever knew, and the parties to the dismemberment of Poland were our allies, and our only powerful and effective allies. We had every motive of policy to court their friendship—every reason of state seemed to require that we should not permit them to be abused and vilified by English writers. What was the fact? Did any Englishman consider himself at liberty, on account of temporary interests, however urgent, to silence those feelings of humanity and justice which guard the certain and permanent interests of all countries? You all remember that every voice and every pen, and every press in England, were unceasingly employed to brand that abominable robbery. You remember that this was not confined to private writers, but that the same abhorrence was expressed by every member of both houses of parliament who was not under the reſtraints of miniſterial reserve. No minister dared even to blame the language of honest indignation which might be very inconvenient to his most important political projects; and I hope I may venture to say, that no English assembly would have endured such a sacrifice of eternal juſtice to any miserable interest of an hour. Did the law officers of the crown venture to come into a court of justice to complain of the boldest of the publications of that time? They did not. I do not say that they felt any disposition to do so—I believe that they could not.

But

But I do say, that if they had—if they had spoken of the necessity of confining our political writers to cold narrative and unfeeling argument; if they had informed the jury, that they did not prosecute history but invective; that if private writers be at all to blame great princes, it must be with moderation and decorum, the sound heads and honest hearts of an English jury would have confounded such sophistry, and declared, by their verdict, that moderation of language is a relative term, which varies with the subject to which it is applied; that atrocious crimes are not to be related as calmly and coolly as indifferent or trifling events; that if there be a decorum due to exalted rank and authority, there is also a much more sacred decorum due to virtue and to human nature, which would be outraged and trampled under foot, by speaking of guilt in a lukewarm language, falsely called moderate.

"Soon after, gentlemen, there followed an act, in comparison with which all the deeds of rapine and blood perpetrated in the world are innocence itself—the invasion and destruction of Switzerland, that unparalleled scene of guilt and enormity; that unprovoked aggression against an innocent country, which had been the sanctuary of peace and liberty for three centuries; respected as a sort of sacred territory by the fiercest ambition; raised, like its own mountains, beyond the region of the storms which raged around on every side; the only warlike people that never sent forth armies to disturb their neighbours; the only government that ever accumulated treasures without imposing taxes; an innocent treasure, unstained by the tears of the poor, the inviolate patrimony of the commonwealth, which attested the virtue of a long series of magistrates, but which at length caught the eye of the spoiler, and became the fatal occasion of their

horrible consequences of enforcing rigorously principles of law, which I cannot contest, against political writers. We might have been at peace with France during the whole of that terrible period which elapsed between August 1792 and 1794, which has been usually called the reign of *Robespierre!* The only series of crimes, perhaps, in history, which, in spite of the common disposition to exaggerate extraordinary facts, has been beyond measure under-rated in public opinion. I say this, gentlemen, after an investigation, which I think entitles me to affirm it with confidence. Men's minds were oppressed by the atrocity and the multitude of crimes; their humanity and their indolence took refuge in scepticism from such an overwhelming mass of guilt; and the consequence was, that all these unparalleled enormities, though proved, not only with the fullest historical, but with the strictest judicial evidence, were at the time only half believed, and are now scarcely half-remembered. When these atrocities were daily perpetrating, of which the greatest part are as little known to the public in general as the campaigns of *Genghis Khan*, but are still protected from the scrutiny of men by the immensity of those voluminous records of guilt in which they are related, and under the mass of which they will lie buried, till some historian be found with patience and courage enough to drag them forth into light, for the shame, indeed, but for the instruction of mankind; when these crimes were perpetrating, which had the peculiar malignity, from the pretexts with which they were covered, of making the noblest objects of human pursuit seem odious and detestible; which had almost made the names of liberty, reformation, and humanity, synonymous with anarchy, robbery, and murder; which thus threatened not only to extinguish every principle of improvement, to arrest the progress of civilized

lized society, and to disinherit future generations of that rich succession, which they were entitled to expect from the knowledge and wisdom of the present, but to destroy the civilization of Europe, which never gave such a proof of its vigor and robustness, as in being able to resist their destructive power; when all these horrors were acting in the greatest empire of the continent, I will ask my learned friend, if we had then been at peace with France, how English writers were to relate them so as to escape the charge of libelling a friendly government?

"When *Robespierre*, in the debates in the National Convention on the mode of murdering their blameless sovereign, objected to the formal and tedious mode of murder called a trial, and proposed to put him immediately to death without trial, '*on the principles of insurrection*,' because, to doubt the guilt of the king would be to doubt of the innocence of the convention, and if the king were not a traitor, the convention must be rebels! would my learned friend have had an English writer state all this with '*decorum and moderation?*' would he have had an English writer state, that though this reasoning was not perfectly agreeable to our national laws, or perhaps to our national prejudices, yet it was not for him to make any observations on the judicial proceedings of foreign states?

"When *Marat*, in the same convention, called for two hundred and seventy thousand heads, must our English writers have said, that the remedy did, indeed, seem to their weak judgment rather severe; but that it was not for them to judge the conduct of so illustrious an assembly as the national convention, or the suggestions of so enlightened a statesman as M. Marat?

"When that convention resounded with applause at the news of several hundred aged priests being thrown into

into the *Loire*, and particularly at the exclamation of *Carrier*, who communicated the intelligence, '*What a revolutionary torrent is the Loire!*' when these suggestions and narratives of murder, which have hitherto been only hinted and whispered in the most secret cabals, in the darkest caverns of banditti, were triumphantly uttered, patiently endured, and even loudly applauded by an assembly of seven hundred men, acting in the sight of all Europe, would my learned friend have wished that there had been found in England a single writer so base and so deliberate upon the most safe, decorous, and polite manner of relating all these things to his countrymen?

"When Carrier ordered five hundred children under fourteen years to be shot, the greater part of whom escaped the fire from their size, when the poor victims run for protection to the soldiers, and were bayonetted clinging round their knees! would my friend—but I cannot pursue the strain of interrogation! it is too much! It would be a violence which I cannot practice on my own feelings—It would be an outrage to my friend—It would be an affront to you—It would be an insult to humanity. *No!* Better, ten thousand times better, would it be that every press in the world were burnt, that the very use of letters were abolished, that we were returned to the honest ignorance of the rudest times—than that the results of civilization should be made subservient to the purposes of barbarism—than that literature should be employed to teach a toleration for cruelty, to weaken moral hatred for guilt, to deprave and brutalize the human mind. I know that I speak my friend's feelings as well as my own, when I say God forbid that the dread of any punishment should ever make any Englishman an accomplice in so corrupting

ing his countrymen, a public teacher of depravity and barbarity!

"Mortifying and horrible as the idea is, I must remind you, gentlemen, that even at that time, even under the reign of Robespierre, my learned friend, if he had then been attorney-general, might have been compelled by some most deplorable necessity, to have come into this court to ask your verdict against the libellers of *Barrere* and *Collot d'Herbois*. Mr. PELTIER then employed his talents against the enemies of the human race, as he has uniformly and bravely done. I do not believe that any peace, any political considerations, any fear of punishment, would have silenced him. He has shewn too much honor and constancy, and intrepidity, to be shaken by such circumstances as these.

"My learned friend might then have been compelled to have filed a criminal information against Mr. PELTIER, for "wickedly and maliciously intending to vilify and degrade *Maximilian Robespierre*, president of the committee of public safety of the French Republic!' He might have been reduced to the sad necessity of appearing before you to bely his own better feelings; to prosecute Mr. PELTIER for publishing those sentiments which my friend himself had a thousand times felt, and a thousand times expressed. He might have been obliged even to call for punishment upon Mr. PELTIER, for language which he and all mankind would for ever despise Mr. PELTIER if he were not to employ. Then indeed, gentlemen, we should have seen the last humiliation fall on England; the tribunals, the spotless and venerable tribunals of this free country, reduced to be the ministers of the vengeance of *Robespierre!* What could have rescued us from this last disgrace? The honesty and courage of a jury. They would have delivered the judges of their country from the

the dire necessity of inflicting punishment on a brave and virtuous man, because he spoke truth of a monster. They would have despised the threats of a foreign tyrant as their ancestors braved the power of oppressors at home.

"In the court where we are now met, Cromwell twice sent a satirist on his tyranny to be convicted and punished as a libeller, and in this court, almost in sight of the scaffold streaming in the blood of his sovereign, within hearing of the clash of his bayonets which drove out Parliaments with contumely, two successive juries rescued the intrepid satirist* from his fangs, and sent out with defeat and disgrace the usurper's attorney-general from what he had the insolence to call *his* court! Even then, gentlemen, when all law and liberty were trampled under the feet of a military banditti; when those great crimes were perpetrated on a high place and with a high hand against those who were the objects of public veneration, which more than any thing else upon earth overwhelm the minds of men, break their spirits, and confound their moral sentiments, obliterate the distinctions between right and wrong in their understanding, and teach the multitude to feel no longer any reverence for that justice which they thus see triumphantly dragged at the chariot wheels of a tyrant;—Even then, when this unhappy country, triumphant indeed abroad but enslaved at home, had no prospect but that of a long succession of tyrants wading through slaughter to a throne—even then, I say, when all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors. That spirit is, I trust in God, not extinct: and if any modern tyrant were, in the drunkenness of his insolence, to hope to overawe an English jury, I trust and I believe that they would tell him:

* Lilburne.

'Our

'Our ancestors braved the bayonets of Cromwell—we bid defiance to yours. *Contempsi Catilinæ gladios—non pertimescam tuos!*'

"What could be such a tyrant's means of overawing a jury?—As long as their country exists, they are girt round with impenetrable armor. Till the destruction of their country, no danger can fall upon them for the performance of their duty, and I do trust that there is no Englishman so unworthy of life as to desire to outlive England. But if any of us are condemned to the cruel punishment of surviving our country—if in the inscrutable counsels of Providence, this favored seat of justice and liberty, this noblest work of human wisdom and virtue, be destined to destruction, which I shall not be charged with national prejudice for saying would be the most dangerous wound ever inflicted on civilization; at least, let us carry with us into our sad exile the consolation that we ourselves have not violated the rights of hospitality to exiles—that we have not torn from the altar the suppliant who claimed protection as the voluntary victim of loyalty and conscience!

"Gentlemen, I now leave this unfortunate gentleman in your hands. His character and his situation might interest your humanity—But, on his behalf, I only ask justice from you. I only ask a favorable construction of what cannot be said to be more than ambiguous language, and this you will soon be told from the highest authority is a part of justice.

SPEECH

SPEECH of JOHN PHILPOT CURRAN, Esq., in defence of ARCHIBALD HAMILTON ROWAN, Esq. delivered in the court of King's Bench, in Ireland, on the 29th of January, 1794. The Attorney-General filed an information against Mr. ROWAN, in which he was charged, as Secretary to the SOCIETY of UNITED IRISHMEN at Dublin, with having published a false, malicious, and seditious libel.

"Gentlemen of the jury,

"When I consider the period at which this prosecution is brought forward; when I behold the extraordinary safeguard of armed soldiers resorted to, no doubt for the preservation of peace and order; when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved personal character, of one of the most respected families of our country; himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern—Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say that I never rose in a court of justice with so much embarrassment as upon this occasion.

"If, gentlemen, I could entertain an hope of finding refuge for the disconcertion of my mind in the perfect composure of yours: if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgments undisturbed and your hearts at ease, I know I should form a most erroneous opinion of your character: I entertain no such chimerical hope; I form no such unworthy opinion; I expect not that your hearts can be more at ease than my own;

own; I have no right to expect it; but I have a right to call upon you in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts as far as you are able of every bias of prejudice or passion; that, if my client is guilty of the offence charged upon him, you may give tranquillity to the public by a firm verdict of conviction; or, if he is innocent, by as firm a verdict of acquittal; and that you will do this in defiance of the paltry artifices and senseless clamors that have been resorted to in order to bring him to his trial with anticipated conviction. And, gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and the talents of the excellent person who conducts that prosecution; I know how much he would disdain to impose on you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason and fact and proof only ought to work upon our understandings.

"Perhaps, gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncolored statement of mere facts, premising only to you that I have it in strictest injunction from my client, to defend him upon facts and evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that enquiry, which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

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"In the month of December 1792, Mr. ROWAN was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honorable personage now on that bench, and admitted to bail.

"He remained a considerable time in this city, soliciting the threatened prosecution, and offering himself to a fair trial by a jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand jury. I do not mean by this to say that informations *ex officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the king's prosecutor, that the accusation labors under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand jury, it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of an *ex officio* information.

"If such bill had been sent up and found, Mr. ROWAN would have been tried at the next commission; but a speedy trial was not the wish of his prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. ROWAN offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed; that is, in fact, a third prosecution was instituted upon the same

charge. This last was filed on the 8th day of last July. Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. ROWAN is pursued as a criminal, or hunted down as a victim. It is not, therefore, by insinuation or circuity, but it is boldly and directly that I assert that oppression has been intended and practised upon him, and by those facts which I have stated I am warranted in the assertion.

"His demand, his intreaty to be tried was refused, and why? a hue and cry was to be raised against him; the sword was to be suspended over his head—some time was necessary for the public mind to become heated by the circulation of artful clamors of anarchy and rebellion; those same clamors which with more probability, but not more success, had been circulated before through England and Scotland. In this country the causes and the swiftness of their progress were as obvious, as their folly has since become to every man of the smallest observation; I have been stopped myself with 'Good God, Sir, have you heard the news? No, Sir, what?—Why, one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows as he passed little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants.'

"Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us—but time has also detected the imposture of these Cock-lane apparitions, and you cannot now, with your eyes open, give a verdict without asking your

consciences this question: Is this a fair and honest prosecution?—Is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you that you are not convened to try the guilt of a libel, affecting the personal character of any private man; I know no case in which a jury ought to be more severe than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a jury should be more exerted, than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution, (to which in its fullest extent we have an undoubted right, however distant we may be from the actual enjoyment,) and in which it surpasses every known government in Europe, is this—that its only professed object is the general good, and its only foundation the general will; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be. This is a kind of subject which I feel myself overawed when I approach; there are certain fundamental principles which nothing but necessity should expose to public examination; they are pillars, the depth of whose foundation you cannot explore without endangering their strength; but let it be recollected that the discussion of such topics should not be condemned in me, nor visited upon my client. The blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that,

that, the freedom of the press has been cherished by the law of England. In private defamation let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration let it never be supported; not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find in the detected falsehood of a licentious press a security and a credit which it could never otherwise obtain. I said a good government cannot be endangered; I say so again; for whether it be good or bad can never depend upon assertion, the question is decided by simple inspection; to try the tree, look at its fruit; to judge of the government, look at the people; what is the fruit of good government? The virtue and happiness of the people. Do four millions of people in this country gather those fruits from that government to whose injured purity, to whose spotless virtue and violated honor, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, gentlemen of that jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—do they gather those fruits? are they orderly, industrious, religious and contented? do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression? Or, to try them by a test as unerring as any of the former, are they united? The perjod has now elapsed in which considerations of this extent would have been deemed improper to a jury: happily for these countries, the legislature of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the space of thirty or forty years a usage had prevailed in Westminster-hall, by which the judges assumed to themselves the decision of the question, whether libel

or not; but the learned counsel for the prosecution are now obliged to admit that this is a question for the jury only to decide. You will naturally listen with respect to the opinion of the court, but you will receive it as a matter of advice, not as matter of law; and you will give it credit not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

"Give me leave now to state to you the charge, as it stands upon the record.—It is, that Mr. ROWAN, 'being a person of a wicked and turbulent disposition, and maliciously designing and intending to excite and diffuse amongst the subjects of this realm of Ireland discontents, jealousies and suspicions of our lord the king and his government, and disaffection and disloyalty to the person and government of our said lord the king, and to raise very dangerous seditions and tumults within this kingdom of Ireland, and to draw the government of this kingdom into great scandal, infamy and disgrace, and to incite the subjects of our said lord the king to attempt, by force and violence and with arms, to make alterations in the government, state and constitution of this kingdom, and to incite his Majesty's said subjects to tumult and anarchy, and to overturn the established constitution of this kingdom, and to overawe and intimidate the legislature of this kingdom by an armed force;' did 'maliciously and seditiously' publish the paper in question.

"Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. ROWAN; namely, that he did, with the intents set forth in the information, publish this paper; so that here you have in fact two or three questions for your decision: first, the matter of fact of the publication; namely, did Mr. ROWAN publish that paper? If Mr. ROWAN

ROWAN did not in fact publish that paper, you have no longer any question on which to employ your minds. If you think that he was in fact the publisher, then and not till then, arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this, is the paper a libel? and did he publish it with the intent charged in the information? But whatever you may think of the abstract question; whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can be no ground for a verdict against him, unless you also are persuaded that what he did was done with a criminal design. I wish, gentlemen, to simplify and not to perplex; I therefore say again, if these three circumstances conspire, that he published it, that it was a libel, and that it was published with the purposes alleged in the information, you ought unquestionably to find him guilty; if, on the other hand, you do not find that all these circumstances concurred; if you cannot upon your oaths say that he published it; if it be not in your opinion a libel, and if he did not publish it with the intention alleged: I say, upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquittal.

"Gentlemen, Mr. Attorney-General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period, at which he has but slightly glanced; I speak of the events which took place before the close of the American war. You know, gentlemen, that France had espoused the cause of America, and we became thereby engaged in a war with that nation. *Heu nescia mens hominum futuri!* Little did that ill-fated monarch know that he was

forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that at a time when we had scarcely a regular soldier for our defence, when the old and young were alarmed and terrified with apprehensions of descent upon our coasts, that Providence seemed to have worked a sort of miracle in our favor. You saw a band of armed men come forth at the great call of nature, of honor, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom: to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and reliance, of danger and protection; imploring the blessings of heaven upon their heads, and its conquests upon their swords. That illustrious, and adored, and *abused* body of men stood forward and assumed the title, which, I trust, the ingratitude of their country will never blot from its history, 'THE VOLUNTEERS OF IRELAND.'

"Give me leave now, with great respect, to put one question to you: Do you think the assembling of that glorious band of patriots was an insurrection? do you think the invitation to that assembling would have been sedition? They came under no commission but the call of their country; unauthorised, and unsanctioned except by public emergency and public danger. I ask was that meeting insurrection or not?—I put another question; If

any

any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching when the unprotected feebleness of age and sex, when the sanctity of habitation would be disregarded and profaned by the brutal ferocity of a rude invader: if any man had then said to them, 'Leave your industry for a while, that you may return to it again, and come forth in arms for the public defence.' I put the question boldly to you, gentlemen: It is not the case of the volunteers of that day; it is the case of my client at this hour which I put to you. Would that call have been then pronounced in a court of justice, or by a jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law? It is the permanency of the law; it is that whenever the fact is the same, the law is also the same; it is that the law remains a written, monumented and recorded letter to pronouce the same decision upon the same facts whenever they shall arise. I will not affect to conceal it: you know there has been an artful, ungrateful, and blasphemous clamor raised against these illustrious characters, the saviors of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alleged to be criminal: 'You first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes it now becomes necessary that you should resume them.'

"I should be the last in the world to impute any want of candor to the right honorable gentleman, who has stated the case on behalf of the prosecution: but he has certainly fallen into a mistake, which, if not explained,

might be highly injurious to my client. He supposed that this publication was not addressed to those ancient volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men as has been called a banditti, with what justice it is unnecessary to enquire, and not to the old volunteers? As to the sneer at the words *Citizen Soldiers*, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, 'that no man in becoming a soldier ceases to be a citizen.' Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue! and would to God, for the sake of humanity, that they had preserved even the little they did borrow! If even there could be an objection to that appellation, it must have been strongest when it was first assumed*. To that period the writer manifestly alludes; he addresses those who first took up arms: 'You first took up arms to protect your country

* Whoever will take the trouble of reading the resolutions and addresses of the old volunteers, at and prior to 1783, will find the terms *Citizen Soldiers*, and *Citizen Soldiery*, to have been no uncommon appellation to that body.

try from foreign enemies and from domestic disturbance; for the same purposes it now becomes necessary that you should resume them.' Is this applicable to those who had never taken up arms before? 'A proclamation,' says this paper, 'has been issued in England for embodying the militia, and a proclamation has been issued by the lord lieutenant and council in Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home.' God help us! from the situation of Europe at that time, we were threatened with too probable danger from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home. I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short; I do conceive it competent to a British subject—if he thinks that a proclamation has issued for the purpose of raising false terrors, I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right with respect to such misrepresented danger; and until a proclamation in this country shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther—if an actual law had passed receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great-Britain are thus questionable, upon what ground the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

"Whatever

"Whatever be the motive, or from whatever quarter it arises," ſays this paper, "alarm has arisen." Gentlemen, do you not know that to be the fact? It has been ſtated by the Attorney General, and most truly, that the most gloomy apprehenſions were entertained by the whole country. "You volunteers of Ireland are therefore ſummoned to arms at the inſtance of government, as well as by responſibility attached to your character, and the permanent obligations of your inſtitution." I am free to confeſs, if any man aſſuming the liberty of a Britiſh ſubject to queſtion public topics, ſhould under the maſk of that privilege publiſh a proclamation inviting the profligate and ſeditious, thoſe in want and thoſe in deſpair, to riſe up in arms to overawe the legiſlature, to rob us of whatever portion of the bleſſings of a free government we poſſeſs; I know of no offence involving greater enormity. But that, Gentlemen, is the queſtion you are to try. If my client acted with an honeſt mind and fair intention, and having, as he believed, the authority of government to ſupport him in the idea that danger was to be apprehended, did apply to that body of ſo known and ſo revered character, calling upon them by their former honour, the principle of their glorious inſtitution, and the great ſtake they poſſeſſed in their country. If he interpoſed not upon a fictitious pretext, but a real belief of actual and imminent danger, and that their arming at that critical moment was neceſſary for the ſafety of their country, his intention was not only innocent, but highly meritorious. It is a queſtion, gentlemen, upon which you only can decide; it is for you to ſay whether it was criminal in the defendant to be ſo miſled, and whether he is to fall a ſacrifice to the proſecution of that government by which he was ſo deceived. I ſay again, gentlemen, you can look only to his own words as the interpreter of his meaning;

ing; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, gentlemen, is shortly and simply this: a man of the first family and fortune, and character and property among you, reads a proclamation stating the country to be in danger from abroad and at home, and thus alarmed—thus upon authority of the prosecutor alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear. You must surrender, I hesitate not to say it, your oaths to unfounded assertion, if you can submit to say, that such an act of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the impostor? I blush and I shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of that impostor.

"You perceive, gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. ROWAN or not. I have been unintentionally led into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of topic I am upon, namely, the merit of the publication in question.

"This publication, if ascribable at all to Mr. Rowan, contains four distinct subjects: the first the invitation to the volunteers to arm; upon that I have already observed: but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in parliament; it states, thirdly, the necessity of an emancipation of the Catholic

deny the wisdom and the humanity of the advice, to approach the defects of government with "pious awe and trembling solicitude." What better doctrine could the Pope or the Tyrants of Europe desire? We think, therefore, that the cause of truth and justice can never be hurt by temperate and honest discussions; and that cause which will not bear such a scrutiny, must be systematically or practically bad. We are sensible that those who are not friends to the general good, have attempted to inflame the public mind with the cry of "danger!" whenever men have associated for discussing the principles of government; and we have little doubt but such conduct will be pursued in this place. We would therefore caution every honest man, who has really the welfare of the nation at heart, to avoid being led away by the prostituted clamors of those who live on the sources of corruption. We pity the fears of the timorous, and we are totally unconcerned respecting the false alarms of the venal."——

——"We view with concern the frequency of wars. —We are persuaded that the interests of the poor can never be promoted by accession of territory, when bought at the expence of their labour and blood; and we must say, in the language of a celebrated author—"We, who are only the people, but who pay for wars with our substance and our blood, will not cease to tell kings," or governments, "that to them alone wars are profitable: that the true and just conquests are those which each makes at home, by comforting the peasantry, by promoting agriculture and manufactories, by multiplying men, and the other productions of nature; that then it is that kings may call themselves the image of God, whose will is perpetually directed to the creation of new beings. If they continue to make us fight and kill one another, in uniform,

uniform, we will continue to write and speak, until nations shall be cured of this folly."—We are certain our present heavy burdens are owing in a great measure to cruel and impolitic wars, and therefore we will do all on our part, as peaceable citizens, who have the good of the community at heart, to enlighten each other, and protest against them.

"The present state of the representation of the people, calls for the particular attention of every man who has humanity sufficient for the honor and happiness of his country; to the defects and corruptions of which we are inclined to attribute unnecessary wars, &c. &c. We think it a deplorable case when the poor must support a corruption which is calculated to oppress them; when the labourer must give his money to afford the means of preventing him having a voice in its disposal; when the lower claſſes may say,—"We give you our money, for which we have toiled and sweated, and which would save our families from cold and hunger; but we think it more hard that there is no body whom we have delegated, to see that it is not improperly and wickedly spent; we have none to watch over our interests; the rich only are represented."——

——"An equal and uncorrupt representation would, we are persuaded, save us from heavy expences, and deliver us from many oppressions; we will therefore do our duty to procure this reform, which appears to us of the utmost importance."

"In ſhort we see with the most lively concern, an army of placemen, pensioners, &c. fighting in the cause of corruption and prejudice, and spreading the contagion far and wide."——

——"We see with equal sensibility the present outcry against reforms, and a proclamation (tending to cramp the

the liberty of the press, and discredit the true friends of the people) receiving the support of numbers of our countrymen."——

——"We see burdens multiplied—the lower classes sinking into poverty, disgrace, and excesses, and the means of these shocking abuses increased for the purposes of revenue."——

——"We ask ourselves—"Are we in England?—Have our forefathers fought, bled, and conquered for liberty? And did they not think that the fruits of their patriotism would be more abundant in peace, plenty, and happiness?"——

——"Is the condition of the poor never to be improved? Great Britain must have arrived at the highest degree of national happiness and prosperity, and our situation must be too good to be mended, or the present outcry against reforms and improvements is inhuman and criminal. But we hope our condition will be speedily improved, and to obtain so desirable a good is the object of our present association; an union founded on principles of benevolence and humanity; disclaiming all connexion with riots and disorder, but firm in our purpose and warm in our affections for liberty.

"Lastly—We invite the friends of freedom throughout Great Britain to form similar societies, and to act with unanimity and firmness, till the people be too wise to be imposed upon, and their influence in the government be commensurate with their dignity and importance.

"THEN SHALL WE BE FREE AND HAPPY."

"Such, gentlemen, is the language which a subject of Great Britain thinks himself warranted to hold, and upon such language has the corroborating sanction of a British jury been stamped by a verdict of acquittal. Such was the honest and manly freedom of publication, in a country too

where the complaint of abuses has not half the foundation it has here. I said I loved to look to England for principles of judicial example, I cannot but say to you that it depends on your spirit whether I shall look to it hereafter with sympathy or with shame. Be pleased now, gentlemen, to consider whether the statement of the imperfection in your representation, has been made with a desire of inflaming an attack upon the public tranquillity, or with an honest purpose of procuring a remedy for an actually existing grievance.

"It is impossible not to revert to the situation of the times, and let me remind you that whatever observations of this kind I am compelled thus to make in a court of justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution.

"Gentlemen, the representation of your people is the vital principle of their political existence; without it they are dead, or they live only to servitude; without it, there are two estates acting upon and against the third, instead of acting in co-operation with it; without it, if the people are oppressed by their judges, where is the tribunal to which their judges can be amenable? without it, if they are trampled upon and plundered by a minister, where is the tribunal to which the offender shall be amenable? without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings? Shall they be found, let me ask you, in the accursed band of imps and minions, that bask in their disgrace, fatten upon their spoils, and flourish upon their ruin? But let me not put this to you as a merely speculative question. It is a plain question of fact: rely upon it, physical man is every where the same, it is only the various operation of moral causes that gives variety to the social or individual character

racter and condition. How happens it that modern slavery looks quietly at the despot, on the very spot where Leonidas expired? The answer is easy, Sparta has not changed her climate, but she has lost that government which her liberty could not survive.

"I call you, therefore, to the plain question of fact:—This paper recommends a reform in parliament; I put that question to your consciences, do you think it needs that reform? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be? Do you hesitate for an answer? If you do, let me remind you that until the last year three millions of your countrymen have by the express letter of the law been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary? If you do not feel the mockery of such a charge, look at your country, in what state do you find it? Is it in a state of tranquillity and satisfaction? These are traces by which good is ever to be distinguished from bad government. Without any very minute enquiry or speculative refinement; do you feel that a veneration for the law, a pious and humble attachment to the constitution, form the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

"Gentlemen, I mean not to impeach the state of your representation, I am not saying that it is defective, or that it ought to be altered or amended; nor is this a place for me to say, whether I think that three millions of the in-

habitants of a country, whose whole number is but four, ought to be admitted to any efficient situation in the state; it may be said, and truly, these are not questions for either of us directly to decide: but you cannot refuse them some passing consideration at least, when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding;—whether it cannot be mistake; whether it can be only sedition.

"And here, gentlemen, I own I cannot but regret, that one of our countrymen should be criminally pursued for asserting the necessity of a reform, at the moment when that necessity seems admitted by the parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution: far am I from imputing any sinister design to the virtue or wisdom of our government; but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information.

"I am the more forcibly impressed by this concern, when I consider that when this information was first put upon the file, the subject was transiently mentioned in the house of commons. Some circumstances retarded the progress of the inquiry there; and the progress of the information was equally retarded here. The first day of this session, you all know, that subject was again brought forward in the house of commons, and as if they had slept together, this prosecution was also revived in the court of King's Bench; and that before a jury, taken from a pannel partly composed of those very members of parliament,

parliament, who in the house of commons must debate upon this subject as a measure of public advantage, which they might have here to consider as a public crime *.

"This paper, gentlemen, insists upon the necessity of emancipating the catholics of Ireland, and that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a jury to decide upon, I should be at a loss to discover. It seems as if the progress of public reformation was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our catholic brethren have obtained that admission, which it seems it was a libel to propose: in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our catholic brethren? Has the bigotted malignity of any individuals been crushed? Or has the stability of the government, or has that of the country been weakened. Or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, 'You have demanded emancipation, and you have got it; but we abhor your persons, we are outraged at your success; and we will stigmatize by a criminal prosecution the relief which you have obtained from the voice of your country.' I ask you, gentlemen, do you think, as honest men anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that

* Among the names on the pannel were the right hon. J. Cuffe, M. P. —Right hon. D. Latouche, M. P.—Sir W. G. Newcomen, Bart. M. P.—J. Maxwell, M. P.—C. H. Coote, M. P.—Henry Brien, M. P.—H. V. Brooke, M. P.—J. Reilly, M. P.—J. Pomeroy, M. P.

you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own parliament by the humanity of their sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth their advocate? I put it to your oaths, do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? To propose the redeeming of religion from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it; giving, I say, in the so much censured words of this paper, giving 'universal emancipation!' I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil; which proclaims even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of 'universal emancipation.' No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom, an Indian or an African sun may have burnt upon him;—no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and

and disenthralled, by the irresistible genius of 'universal emancipation.'

[Here Mr. Curran was interrupted by a sudden burst of applause from the court and hall. Silence however was restored after some minutes, by the interposition of Lord Clonmell, who declared the great pleasure he felt himself, at the exertion of professional talents, but disapproved any intemperate expression of applause in a court of justice.]

Mr. Curran then proceeded—"Gentlemen, I am not such a fool as to ascribe any effusion of this sort, to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer! What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that power, which stamped that character upon her.

"And, gentlemen, permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance, or licentiousness, I trust in God I stand in that situation, that, humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connection of principle or party, or even private friendship; and saying this I cannot but add, that I consider not to be acquainted with such a man as Mr. ROWAN, a want of personal good fortune.

"Gentlemen, upon this great subject of reform and emancipation there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. ROWAN, for which the habits of professional studies, and technical adherence to established forms, have rendered me unfit. It is however my duty, standing here as

his advocate, to make some few observations to you, which I conceive to be material.

"Gentlemen, you are sitting in a country, which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you;

Una salus ambobus erit, commune periclum.

But to accomplish that union, let me tell you, you must learn to become like the English people; it is vain to say, you will protect their freedom if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little further, I know you will interpret what I say with the candor in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart, whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say; but that so is the fact, you need not look to the east, or to the west, you need only look to yourselves.

"In order to confirm that observation, I would appeal to what fell from the learned counsel for the crown, that notwith-

notwithstanding the alliance subsisting for two centuries past between the two countries, the date of liberty in one goes no further back than the year 1784.

"If it required additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connections more as colonies, than as allies; and it must be owing to the great spirit indeed of Ireland if she shall continue free. Rely upon it, she will ever have to hold her course against an adverse current; rely upon it, if the popular spring does not continue strong and elastic, rely upon it, a short interval of debilitated nerve and broken force will send you down the stream again, and reconsign you to the condition of a province.

"If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will be always thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connection with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty, and British connection, will see, that the only means of saving both must be, as Lord Chatham expressed it, the infusion of new health and blood into the constitution. He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate and co-interested ally, instead of an oppressed, enfeebled and suspected dependant; he will

see how grossly the credulity of Britain is abused by those, who make her believe that her solid interest is promoted by our depression; he will see the desperate precipice to which she approaches by such a conduct, and with an animated and generous piety he will labor to avert her danger. But, gentlemen of the jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of his people, because his interest lives beyond his life; it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity; it must live in that heart-attaching bond by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of king and father of his people.

"But what can be the interest of such a government as I have described? Not the interest of the king, not the interest of the people, but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and deforming the other; the interest of unpunished rapine and unmerited favor: that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe; and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What therefore I say, gentlemen, will be the fate of the man, who embarks in an enterprise of so much difficulty and danger? I will not answer it. Upon that hazard has my client put every thing that can be dear to man;—his fame, his fortune, his person, his liberty, and his children; but with what event your verdict only can answer, and to that I refer your country.

"Gentlemen, there is a fourth point remaining. Says this paper, 'For both these purposes, it appears necessary

sary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, and uniformity of conduct, an united cause and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness; the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation; unless the sense of the Protestant people be on their part as fairly collected and as judicially directed, unless individual exertion consolidates into collective strength, unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate the administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves.'

"Gentlemen, it is with something more than common reverence, it is with a species of terror that I am obliged to tread this ground.—But what is the idea put in the strongest point of view?—We are willing not to manifest our powers, but to supplicate administration, to anticipate revolution,

revolution, that the legislature may save the country in mercy to itself.

" Let me suggest to you, gentlemen, that there are some circumstances which have happened in the history of this country, that may better serve as a comment upon this part of the case than any I can make. I am not bound to defend Mr. ROWAN as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such as that the not redressing her grievances might lead to a convulsion, and of such an opinion not even Mr. ROWAN is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

" But, gentlemen, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man, as to that of Mr. ROWAN; what then does this part of the publication amount to? In my mind, simply to this: ' The nature of oppression in all countries is such, that although it may be borne to a certain degree, it cannot be borne beyond that degree; you find it exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch James II. experienced this; the time did come, when the measure of popular suffering and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present; I think the state

state of representation of the people in parliament is a grievance; I think the utter exclusion of three millions of people is a grievance of that kind that the people are not likely long to endure, and the continuation of which may plunge the country into that state of despair which wrongs exasperated by perseverance never fail to produce.' But to whom is even this language addressed? not to the body of the people, on whose temper and moderation, if once excited, perhaps not much confidence could be placed; but to that authoritative body whose influence and power would have restrained the excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the volunteers. 'We are told that we are in danger;—I call upon you, the great constitutional saviors of Ireland, defend the country to which you have given political existence, and use whatever sanction your great name, your sacred character, and the weight you have in the community, must give you to repress wicked designs, if any there are.

'We feel ourselves strong; the people are always strong; the public chains can only be riveted by the public hands; look to those devoted regions of southern despotism, behold the expiring victim on his knees, presenting the javelin reeking with his blood to the ferocious monster who returns it into his heart. Call not that monster the tyrant, he is no more than the executioner of that inhuman tyranny which the people practise upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder of France to the few names that we are execrating here? or do you not see that it is the phrensy of an infuriated multitude

abusing its own strength, and practising those hideous abominations upon itself? Against the violence of this strength let your virtue and influence be our safeguard.'

"What criminality, gentlemen of the jury, can you find in this? what at any time? But I ask you, peculiarly at this momentous period, what guilt can you find in it? My client saw the scene of horror and blood which covers almost the face of Europe: he feared that causes, which he thought similar, might produce similar effects, and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance. Yet this is the conduct which the prosecution of this day seeks to punish and stigmatize. And this is the language for which this paper is reprobated to-day, as tending to turn the hearts of the people against their sovereign, and inviting them to overturn the constitution. Let us now, gentlemen, consider the concluding part of this publication: it recommends a meeting of the people to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine that when the Bill of Rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist; that they might lawfully assemble themselves in such manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of deliberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided in doing so they did not commit any breach or

violation of the public peace. I know that there has been a law passed in the Irish parliament of last year, which may bring my former opinion into a merited want of authority. That law declares that no body of men may delegate a power to any smaller number, to act, think, or petition for them. If that law had not passed, I should have thought that the assembling by a delegated convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived before that act that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves or not at all, would in fact be a law not to restrain but to promote insurrection: but that law has spoken, and my error must stand corrected. Of this, however, let me remind you, you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of parliament? You had both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland in 1782, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received, but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon, and to shew the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both houses of parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the catholics of Ireland, publicly elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government,

water, which is to be drank by their rulers, sealed up in bottles, lest some wretched miscreant should throw poison into the draught.

" But, gentlemen, if you wish for a nearer and more interesting example, you have in the history of your own revolution; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly, when the liberty of the press was trodden under foot, when venal sheriffs returned packed juries to carry into effect those fatal conspiracies of the few against the many, when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies, while soundness or sanity remained in them; but at length becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

" In that awful moment of a nation's travail, of the last gasp of tyranny, and the first breath of freedom, how pregnant is the example? The press extinguished, the people enslaved, and the prince undone.

" As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great sentinel of the state, that grand detector of public imposture; guard it, because when it sinks, there sinks with it, in one common grave, the liberty of the subject and the security of the crown.

" Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain

Britain analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty medium through which it was surveyed. We measure inaccessible heights by the shadows which they project; where the lowness and the distance of the light form the length of the shade.

"There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, gentlemen, can you ascribe that, in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winning her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires: crowned as she is with the spoils of every art, and decked with the wreath of every muse; from the deep and scrutinizing researches of her Humes, to the sweet and simple, but not less sublime and pathetic morality of her Burns—how from the bosom of a country like that, genius and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy, for twice the period that

ordinary calculation gives to the continuance of human life? But I will not further press any idea that is painful to me, and I am sure must be painful to you; I will only say, you have now an example, of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide whether you will profit by their experience of idle panic and idle regret, or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry affectation of their repentance. It is now for you to shew that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

"Gentlemen, I have been warning you by instances of public intellect suspended or obscured; let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney General has cited himself, I mean that of the trial of Lambert in England, is there a topic of invective against constituted authorities; is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication for which the printer of it was prosecuted, and acquitted by an English jury? See too what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage, and that of a man who makes publication his trade. And saying this, let me not be misunderstood; it is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet

yet I cannot but say that the movers of this prosecution have forced that question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

"I agree most implicitly with Mr. Attorney General, that nothing can be more criminal than an attempt to work a change in the government by armed force: and I entreat that the court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government; but I put my client's case upon another ground—if he was led into an opinion of grievances where there were none, if he thought there ought to be a reform where none was necessary, he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God before whom the accuser, the accused, and the judge must appear together, that is, not for the clearness of his understanding, but for the purity of his heart.

"Gentlemen, Mr. Attorney General has said, that Mr. ROWAN did by this publication (supposing it to be his) recommend, under the name of equality, a general indiscriminate assumption of public rule by every the meanest person in the state. Low as we are in point of public information, there is not, I believe, any man, who thinks for a moment, that does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that if a people could become so silly as

to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject, "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination." I ask you with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments, the very reverse of what his words avow? and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or if you do adopt an arbitrary principle of imputing to him *your* meaning instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a court acting on the principles of the British constitution.

"In the bitterness of reproach it was said, "Out of thine own mouth will I condemn thee;" from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn. "By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination.—This is a calumny invented by that faction, or that gang, which misrepresents the king to the people, and the people to the king, traduces one half of the nation to cajole the other, and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

"I say therefore, gentlemen of the jury, as to the four

four parts into which the publication must be divided, I answer thus: it calls upon the volunteers. Consider the time, the danger, the authority of the prosecutors themselves for believing that danger to exist; the high character, the known moderation, the approved loyalty of that venerable institution; the similarity of the circumstances between the period at which they were summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, gentlemen, you will decide, whether this part of the publication was libellous and criminal or not.

"As to reform, I could wish to have said nothing upon it. I believe I have said enough: if he thought the state required it, he acted like an honest man; for the rectitude of the opinion he was not answerable, he discharged his duty in telling the country that he thought so.

"As to the emancipation of the catholics, I cannot but say that Mr. Attorney General did very wisely in keeping clear of that. Yet, gentlemen, I need not tell how important a figure it was intended to make upon the scene, though from unlucky accidents it has become necessary to expunge it during the rehearsal.

"Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is however with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

"Whatever, gentlemen, may be your opinion of the

meaning of this publication, there yet remains a great point for you to decide upon: namely, whether in point of fact, this publication be imputable to Mr. ROWAN or not? Whether he did publish it or not? And two witnesses are called to that fact, one of the name of Lyster, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper; he said that he got some paper, but that he had given it away. So that in point of law, there was no evidence given by him, on which it could have gone to a jury, and therefore it turns entirely upon the evidence of the other witness. He has stated, that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every witness must be considered by, and rest with the jury; they are the sovereign judges of that: and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character of your fellow-citizens. Under what circumstances does this evidence come before you? The witness says he has got a commission in the army by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an endorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he "took it with no such view." There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I

know not, I know not the man; but his credit is impeached. Mr. Blake was called, he said he knew him. I asked him, "do you think, sir, that Mr. Lyster is or is not a man deserving credit upon his oath?" If you find a verdict of conviction, it can be only on the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he believed he was a man to be believed upon his oath? He did not attempt to say that he was. The best he could say was, that he would hesitate. Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster, if you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached witness, swearing that he would hesitate to believe him. In my mind there is a circumstance of the strongest nature that came out from Lyster on the table. I am aware that a most respectable man, if impeached by surprize, may not be prepared to repel a wanton calumny by contrary testimony. But was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me, you have brought him here for that purpose." He knew the very witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that credit. What said Mr. Smyth, "From my knowledge of him I would not believe him upon his oath."

Mr. Attorney General.—"I beg pardon, but I must set Mr. Curran right. Mr. Lyster said he had heard Blake would be here, but not in time to prepare himself."

Mr. Curran.—"But what said Mrs. Hatchell? Was the production of that witness a surprize upon Mr.

Lyster? Her cross examination shews the fact to be the contrary. The learned counsel, you see, was perfectly apprized of a chain of private circumstances, to which he pointed his questions. Did he know these circumstances by inspiration? No; they could come only from Lyster himself. I insist, therefore, the gentleman knew his character was to be impeached; his counsel knew it, and not a single witness has been produced to support it: then consider, gentlemen, upon what ground you can find a verdict of conviction against my client, when the only witness produced to the fact of publication is impeached, without even an attempt to defend his character. Many hundreds, he said, were at that meeting, why not produce one of them to swear to the fact of such a meeting? One he has ventured to name, but he was certainly very safe in naming a person who he has told you is not in the kingdom, and could not therefore be called to confront him.

"Gentlemen, let me suggest another observation or two. If still you have any doubt as to the guilt or innocence of the defendant, give me leave to suggest to you what circumstances you ought to consider, in order to found your verdict: You should consider the character of the perſon accused, and in this your task is easy. I will venture to say, there is not a man in this nation more known than the gentleman who is the subject of this prosecution, not only by the part he has taken in public concerns, and which he has taken in common with many, but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly

figure,

figure, with uncovered head, soliciting for their relief, searching the frozen heart of charity for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease and famine and despair, the messenger of heaven, bearing with him food and medicine and consolation. Are these the materials, of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man likely to apostatize from every principle that can bind him to the state; his birth, his property, his education, his character, and his children? Let me tell you, gentlmen of the jury, if you agree with his prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion; and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment with less danger to his person or to his fame: For where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not laboured to alleviate, or whose public condition he had not laboured to improve.

"I cannot, however, avoid adverting to a circumstance that distinguishes the case of Mr. ROWAN from that of a late sacrifice in a neighbouring kingdom.

"The severer law of that country, it seems, and happy for them that it should, enables them to remove from their sight the victim of their infatuation:—the more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before your eyes, a continual

continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society, the man will be weighed against the charge, the witness and the sentence; and impartial justice will demand, why has an Irish jury done this deed? the moment he ceases to be regarded as a criminal, he becomes of necessity an accuser; and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous; let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not, and it cannot record the atrocity of his crime, must record the atrocity of his conviction. And upon this subject, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the jury of his own choice, which the law of England allows, but which ours refuses: collected in that box by a person, certainly no friend to Mr. ROWAN, certainly not very deeply interested in giving him a very impartial jury. Feeling this, as I am persuaded you do, you cannot be surprized, however you may be distressed at the mournful presage, with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation; I will not relinquish the confidence that this day will be the period of his sufferings; and, however, mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes

wishes of his country. But if, which heaven forbid, it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration."

[After Mr. Curran had concluded, there was another universal burst of applause through the court and hall, for some minutes, which was again silenced by the interference of Lord Clonmell.]

Mr. Attorney General.—"My Lords! It is Mr. Prime Serjeant's duty to speak to the evidence; but as Mr. Curran has let fall some things to make an impression, not barely upon those who surround us, I must be excused in stating some facts known to no human being but myself. It has been stated that this was an oppressive prosecution, and that oppression has been intended by the delay. Now, I do aver, that the instructions he has received are false; that I received no instructions of the sort from government, and no government could think of prevailing with me in such a measure. I feel within myself, that no man could ask me such a thing twice in the office I hold. Let the jury consider the fact as it is, let them consider the evidence, and God forbid they should be influenced by any thing but the evidence! —Mr. Curran states that oppression is practised. I am responsible to the court for my conduct here, and if I have carried on this prosecution with oppression, I am responsible to the country. Let this gentleman, if he thinks he has been oppressed, call me to punishment—let me be a disgrace in the eye of the country, and let me be driven

driven from that profession in which I have so long been honored. The facts are these:—the accusation against Mr. ROWAN was made in the month of December 1792, he was arrested in January following, and brought before Mr. Justice Downes, and discharged upon bail. The information was filed in Hilary Term; as soon as it was possible by the rules of the court, Mr. ROWAN pleaded, and the *venire* issued, I do protest with a *bonâ fide* intention to try Mr. ROWAN: After that an error was found in the record, though it had been compared before: the error was this; in the record the words were 'We would do' so and so; in the publication it was 'Would we do' so and so. As soon as that error was discovered, notice was given that the trial could not come forward, and the witnesses were dismissed. In Trinity Term application was made to issue the *venire*, and it appeared from the recorder that he was aware of the defects; I am above concealing any thing, I admit he did offer to waive any objection to the error and go to trial directly. I asked Mr. Kemmis, 'Are the witnesses gone out of town?'—'They are gone to Galway.' I was therefore obliged to refuse the offer, but entered a *Noli prosequi*, and filed a new information. Mr. ROWAN put his plea upon the file, and in Michaelmas Term I applied for a trial. There were several trials at bar appointed, and the court refused, in consequence of the business before them, to try it in that term; and appointed it for this term. These are the facts which I think it my duty to mention, and have no more to say upon the subject, but will leave the case entirely to the jury, whose verdict will not be influenced by such topics as have been thrown out."

Mr. Curran.—"Mr. Attorney, I could not know the circumstance

circumstance you mention, of your witnesses being gone out of town."

Mr. Attorney General.—"It was impossible you should."

Mr. Prime Serjeant.—"Wearied and exhausted as you, my lords, and gentlemen of the jury, must be at this late hour, I yet feel it my duty to trespass a short time upon you, in a prosecution which the Attorney General has been obliged to institute: Gentlemen, I say *obliged*, because prosecution is painful to him, as well as to those who act with him. The infliction of punishment is disagreeable to the court, but in our public duty these weaknesses must give way. There is justice due to the public; my learned friend is the advocate of justice to the public, not of persecution against the defendant. There is no man, who recollects the period at which this publication came out, too notorious and shameful to be forgotten, who must not have thought it highly proper to bring the publisher to a legal trial. To the exertions of government, at that time, it is to be attributed, that the trial by jury still subsists among us, and that he has not been before now tried at another court; that the King's Bench has not been superseded by a Revolutionary Tribunal; and that my learned friend has not, ere now, made room for the public accuser. The defendant must think it fortunate that he is tried according to established law, and defended by counsel of his own election, and before a jury bound by a solemn appeal to God, to find according to the evidence given to them, notwithstanding that disgraceful situation in which it has been stated they will be held, if they presume to find a verdict of conviction. I feel no danger that this jury can be intimidated by apprehensions, or influenced by prejudice. My learned friend and I have been represented as instruments of oppression against

against the gentleman at the bar. I consider it as the talk of the moment, because his learned counsel little knows us, if he thinks us capable of acting so abominable a part; he could not mean it in the extent to which it reaches the common ear. I can consider it only as the splendid effusion of his talents; he was anxious to lead you, gentlemen, from that which was the true object of consideration. You have been told, the defendant was prosecuted because he published an invitation to the volunteers, entered into the discussion of a reform and catholic emancipation, and endeavoured to have a national convention assembled. I will tell the jury it is not a prosecution upon any one of these grounds; but a prosecution, because these subjects were thrown before the public in a paper crammed with libellous and seditious matter, calculated to inflame. These measures, which were sought after, should be procured by the power of reason, and not by an intimidation of the legislature. Little does the defendant's counsel know me, if he thinks I could prosecute a man for calling upon the volunteers to suppress domestic tumult, or resist a foreign foe; these are the subjects to which he calls your attention, totally evading the offensive matter in the publication. Gentlemen, the questions which you are to try are these: Was this matter published? Is it a libel? And was the intention criminal? Can he desire more? If it was not published, if it be not libellous, and the intention was not criminal, I agree that the defendant ought to be acquitted; and if the jury acquit him after a fair and candid discussion of the case, no man will be more satisfied than I shall. But if without such a consideration, a jury in times of distraction and disorder should acquit the factious, I agree with the gentleman, that the world would bear hard upon a jury, who from fear or favour

vour betrayed that situation in which the law and the constitution placed them.

" Let me now, gentlemen, take that place which it is my duty to take, and which the gentlemen on the other side, I suppose from address, so lightly touched upon. I shall reverse the order he adopted. The first question then is, ' Whether the publication of this libel was by the defendant?' If there be a man entertaining a doubt after the evidence stated, it is in vain for me to address him: In support of the fact of publication Mr. Lyster has been examined; he states that, upon the day of the publication of the paper, he was passing through Cope-street, in this city, and seeing a great crowd at the house of Mr. Pardon, he went there to know what the object of the meeting was; he says, that on going to the door he saw Mr. ROWAN, who prevented him from going to that part where the assembly was, saying he could not be let in with coloured clothes: afterwards he went up to the gallery: a bundle of papers was brought, some were thrown upon the table, and some handed up to the gallery, and this particular paper which he produced was thrown from a parcel which Mr. Hamilton ROWAN had in his hand. The witness got this paper, which was thus for the first time put into circulation: he gave an account of the manner in which this matter was communicated to the Crown Solicitor. The witness was questioned much as to family matters, with a view to impeach his character; but it has had a contrary effect, for the matter was submitted to reference, and the authenticity of the instrument under which his brother claimed, has been established, and some hundreds awarded, one shilling of which would not have been given if they believed the instrument to be forged. When he was interrogated as to these matters, he said he heard this day,

day, that Mr. Blake was to be examined to impeach his character, 'If I knew it before,' said he, 'I could have had witnesses from the country to support me.' But when Mr. Blake was called, did he in any respect whatever impeach the character of Mr. Lyster? he would not say that Mr. Lyster was not to be believed. What then must you think, when resort has been had to distant counties to find witnesses to impeach the character of Mr. Lyster, and out of the 150 men assembled in Cope-street, no one has been brought forward to deny the fact which has been sworn to? Will the jury believe that if the fact could be controverted, men would not come forward with emulation to acquit Mr. ROWAN? I there join with his counsel: he is far above bringing any man forward to swear that which is not the fact; he would not purchase an acquittal by such means, and therefore it is, gentlemen, that you have not witnesses to prove he was not there, or to prove he was inactive upon the occasion.

"The next witness, gentlemen, was Mr. Motton: he goes in direct confirmation of every thing sworn to by Lyster, though he does not prove the same individual paper; but he remembered hearing the words of such another paper read: it began with the words, 'Citizen soldiers, to arms!' This evidence, though not decisive of itself as to the identity of the paper, is corroborative of the testimony of Lyster, and shews that Mr. ROWAN was there. Thus stands the evidence as to the publication. Can any man doubt that this paper was published by Mr. ROWAN? It is not necessary for me to tell you what is a publication in point of law, as to writing or printing; but putting it into circulation is a publication in law and fact. I forgot to take notice of the other important attempts to impeach the credit of Mr. Lyster by the evidence

dence of Smyth, who could not prove any thing; and the evidence of an unfortunate woman, between whose daughter and Mr. Lyster's brother there had been some attachment. But that I leave as a matter of law to your Lordships to state to the jury. Thus stands the evidence; and with regard to the publication, if I were upon the jury, no earthly consideration could induce me not to give a verdict of conviction.

"I shall now beg leave to call your attention to the publication itself. It is charged in the information, that it was designed to overthrow the government, to overawe the legislature, to create tumult and disorder; there are paragraphs in the paper to warrant every charge contained in the information, which is, in point of law, sufficiently sustained. If there be a single paragraph of this paper to warrant the jury to draw this conclusion, that it was intended to throw the government into disgrace, to excite the subjects to make alterations in the government by force, to excite them to tumult, to overawe the legislature by an armed force; if, I say, there is a single paragraph in this paper, from which you can draw that inference, it sufficiently proves the subject-matter of the information. The gentlemen concerned for the defendant read, from the account of a trial, what an English jury did in the case of the Morning Chronicle, as an example for an Irish jury, as if it was to bind you upon your oaths; and yet what was the case? The jury thought that a printer, endeavouring to get his bread, was not as guilty as the person composing the libel, and that the former did not distribute it with any malicious view. But suppose 500 juries found such a verdict, are you to follow their example? I am wishing to take up the distinction made by the defendant's counsel and my learned friend in the prosecution. If this paper had

rested with the invitation of the volunteers to arms, he never would have instituted this prosecution upon that account. As in the case in England, Lord Kenyon said, 'there may be much innocent matter in the publication, but *latet anguis in herbâ*, there may be much to censure.' But here is a publication teeming with faction, tumult, and sedition; it is impossible to suppose it was intended for the old volunteers, it comes from the society of United Irishmen. The first words have been passed over by the defendant's counsel, but they shew at once the wicked adoption of French principles and French language. Is there any man who does not know that at that period the French revolutionists universally adopted the expression of 'Citizens.' This paper begins, 'Citizen soldiers, you first took up arms to protect your country from foreign enemies and domestic disturbance; for the same purposes it now becomes necessary that you should resume them.' It is not confined to summoning the volunteers to protect their country, it calls them to political discussion: was this a period for such proceedings? 'A proclamation has been issued in England for embodying the Militia, and a proclamation has been issued by the Lord Lieutenant and Council in Ireland, for repressing all seditious associations; in consequence of both these proclamations it is reasonable to apprehend danger from abroad and danger at home. For whence but from apprehended danger are those menacing preparations for war drawn through the streets of this capital? Or whence, if not to create that internal commotion which was not found, to shake that credit which was not affected, to blast that volunteer honour which was hitherto inviolate.' Gentlemen, was public credit affected or not? Was there a man at that time who could reckon upon the security of his house for a night? 'Are

those terrible suggestions and rumours, and whispers that meet us at every corner, and agitate at least our old men, our women, and our children. Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you volunteers of Ireland are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution.' If this were a real invitation to the volunteers, it would endeavour to reconcile them to government. They were called upon to defend, to stand or fall with the constitution, which they had, so much to their honour, exerted themselves to eſtabliſh. But here follows a direct insinuation calculated to excite jealousy between the government and them. 'We will not at this day condescend to quote authorities for the right of having and of using arms, but we will cry aloud, even amidst the storm raised by the witch-craft of proclamation.' Is that a peaceable invitation to the volunteers? 'that to your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse into impotence and insignificance;' here the country is represented to be in such a state that every man is called upon to rescue it from insignificance; 'to your renovation must be owing its future freedom and its present tranquillity: you are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war.'— This is a peaceable, quiet invitation to the volunteers, setting them againſt the legalized eſtablishment of the country, and against that measure which was in agitation.

" It is called a suspected militia. The establishment of a great constitutional force, a militia, will be soon experienced to be of advantage to the kingdom, and not an oppression; but too fatal have been the consequences of decrying it; opposition was given to the militia law, and numbers have fallen sacrifices to their error. It is nothing less than an order to the army to disband; that body of men to whom we owe the safety of the state, are told they are not to be entrusted.—' Citizen soldiers, to arms! take up the shield of freedom and the pledges of peace—peace, the motive and end of your virtuous institution—war, an occasional duty, ought never to be made an occupation; every man should become a soldier in the defence of his rights, no man ought to continue a soldier for offending the rights of others; the sacrifice of life in the service of our country is a duty much too honorable to be intrusted to mercenaries.' In another paragraph it says, ' By liberty we never understood unlimited freedom, nor by equality the levelling of property or the destruction of subordination; this is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King.' What is the meaning of this paragraph? it was unintelligible to me until I heard the argument of the counsel; he did fairly avow it to be the government of this country, that a gang was formed to preserve themselves in power; otherwise indeed it is the most rank nonsense and ribaldry that ever fell from the pen of man; it seems to be a French idea, to excite tumult in the whole body of the people. The publication goes on and says—' Here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation—in four words lies all our power, *universal emancipation and representative legislature*; yet we

are

are confident that, on the pivot of this principle, a convention, still less a society, still less a single man, will be able first to move, and then to raise the world. We therefore wish for Catholic emancipation, without any modification; but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions—it is narrow when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the Iriſh nation, casts an equal eye over the whole island, embraces all that think, and feels for all that suffer; the Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect, but to society—to no creed, but Christianity—to no party, but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on as we do to-day, in the pursuit of that reform, which would still be wanting to ratify their liberties as well as our own.' Here the libel recommends an emancipation to the Catholics, as a colourable pretence for accomplishing their other schemes. 'For both these purposes,' says it, 'it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority, and therefore an assembly of a similar nature and organization.' Here the very terms made use of by the French revolutionists are again adopted in this publication—he says, 'Organization is necessary to establiſh an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation.'

" In the subsequent paragraph the author inforces the necessity of the speedy meeting of conventions.—' If,' says he, ' a convention on the one part does not 'soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest, the people will relax into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrections, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation—unless the sense of the protestant people be on their part as fairly collected and as judiciously directed; unless individual exertion consolidates into collective strength; unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all.' Does this mean to give the fullest dominion to the whole body of the people, to overawe the governing executive power? Gentlemen, the *mass* of the people is to be collected after the French manner, and bear down all before them. French doctrines were to be carried into execution. Are those the innocent examination of claims, and the discussion of great political subjects? To what part of the discussion was it necessary to tell the army, that ' seduction made them soldiers?' Was it necessary for the deliberation of that great question, the emancipation of the catholics of Ireland? to say to the army, ' Seduction made them soldiers, but nature made them men.' The words are, ' We now address you as citizens, for to be citizens you became soldiers; nor can we help wishing that all soldiers partaking the passions and interest of the people

people would remember that they were once citizens, that seduction made them soldiers, but 'nature made them men.' I say, gentlemen, where was the necessity of telling the army, that seduction made them soldiers? Was it necessary to detach them from their duty, for the purposes which this publication intended to accomplish? You are told that their whole creed, their whole system, 'lay in four words, *universal emancipation and representative legislature.*' I say, without universal slavery there cannot be universal emancipation, and without the ruin of that constitution, the panegyric upon which produced such a burst of applause in favour of the learned counsel, there cannot be a representative legislature. The legislative authority consists of King, Lords, and Commons—but they must have an elected king and elected nobles to answer their ideas of representative legislature. I am unwilling to state the seditiousness of this libel farther: but there is another paragraph that deserves to be considered—it says, 'The nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves.' Here the government of this country was called upon to yield to this reform, to anticipate revolution, and save this this country in mercy to themselves. The peaceable language of discussion! Can you read this publication and say it was not the intention of the publisher to intimidate and overawe the government of this country? The people are invited to arms, to catch a revolution by force, and then the government is called upon to anticipate the revolution by a reform. Is this the peaceable discussion for which the counsel contend? or is this the freedom of the

press, for which I would go as far as any man? Here the libel points a particular day for the convention to meet; it says, 'The fifteenth of February approaches, a day ever memorable in the annals of this country as the birth-day of New Ireland; let parochial meetings be held as soon as possible, let each parish return delegates, let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace, and freedom, and the spirit of the north will again become the spirit of the nation. The civil assembly ought to claim the attendance of the military associations.' Here the military associations were particularly called on to attend the civil assembly at Dungannon: Was it for the purpose of giving weight to their resolutions? Was it for the purpose of sending their resolutions to parliament, backed by the people in arms? It was a national convention, to be attended by a national guard. This was the object of this publication, as it ſtrikes me; the very able manner in which it was gone through by my learned friend, makes it unnecessary for me to dwell upon it, lest I should weaken the force of his remarks. If you are satisfied of the fact that Mr. ROWAN did publish the instrument in question, then you will consider whether that publication was likely to produce the effects mentioned in the information, and you will decide whether the publication was an innocent or a criminal one? I will agree it is matter for your consideration what was the immediate effect for publishing this libel? Immediately after it was read, some copies of it were thrown out to the mob in the street, who called out for more of them, and more of them were thrown out. Here is a fact, which, if you believe, is of considerable weight. Gentlemen, in this case there has been no justification, nothing has been said to palliate the

publication. You will decide on the matter of this libel, and whether it was published with an innocent intention, or with that seditious view charged in the information.

"Gentlemen of the jury, in any case where a man kills another, it is *primâ facie* evidence of malice; but it admits of proof to shew the manner in which it was done, and whether the party accused killed the person with a felonious intent, or whether the killing was by accident, and not done with any intention of taking away the life of the party. The allusion comes home; here is a libel, and unless it is shewn by excuse or justification that it can be qualified, the law will say it is libellous.

"In the present case, the learned counsel on the part of the defendant has endeavoured to set your hearts and passions against your consciences and judgments, by representing that the liberty of the press would be destroyed by a verdict against the defendant; but I appeal to the authority to which he appealed, to shew what the liberty of the press is: 'It is employed as the sentinel to alarm us; we should take care it is not abused, and converted into a traitor; the instant it degenerates into licentiousness, it must be punished.' That is an opinion to which every man must subscribe, and which should be as lasting as the constitution itself. Gentlemen, I have trespassed too long upon your patience; if you can reconcile it to your oaths, that Mr. ROWAN did not publish this paper, or that it does not contain any matter libellous, no man will be better pleased at an acquittal than I shall. But on the other hand, I conjure you by your oaths, that, uninfluenced by power or prejudice, favour or affection, you discharge your duty to God, your country, and yourselves."

Earl Clonmell, Lord Chief Justice.—"Gentlemen of the jury, at this late hour, it is some relief to the bench and

and myself that the learned gentlemen of the bar on both sides have so ably spoken in this case, that it is not now necessary for me to be very prolix or voluminous in my observations. I shall therefore, for your convenience and that of the bench, contract my observations within as short a space, as in the discharge of my duty I think I ought to do. Before I go into the particulars, or give any opinion upon the publication, I think it my duty to ſtate and fully apprize you of a statute which passed the last session of parliament in this kingdom, by which it is declared and enacted, that upon all trials by indictment or information (which, if it wanted it, is an additional solemnization of this mode of trial) where issue is joined, as in the present case, for making or publishing any libel, the jury may give a verdict of guilty or not, upon the whole matter put in issue, and shall not be required or directed by the court to find guilty, merely upon proof of publication, provided the court shall, according to their discretion, give their opinion upon the matter in issue in like manner as in other criminal cases. I shall endeavour, as far as I can, to conform to the spirit and words of the law. You had the power to do so before, perhaps you had the right; this act of parliament is a legislative exposition of that right, and you will exercise it as becomes you. Though the evidence is not long or complicated, yet the paper is both long and complicated; therefore I will adopt that order which has been made by the bar, and class my observations under four heads,-being the leading objects complained of in this information:

1st. "The making the government obivous by endeavouring to disparage and degrade it.

2d. "To render the people discontented, not only with the government, but the constitution.

3d.

3d. " To solicit the people to take up arms to intimidate the legislature.

4th. " Endeavouring, by tumult and by force, to make alterations in the constitution and government, and overturn them both.

" Gentlemen, every thing which I shall say to you will fall under one of these heads. The information, of which I have an abstract in my hand, is, That ARCHIBALD HAMILTON ROWAN, maliciously designing and intending to excite and diffuse among the subjects of this realm, discontents, jealousies, and suspicions of our lord the king and his government, and to raise dangerous seditions within this kingdom of Ireland, and to draw it into scandal and disgrace, and to incite the subjects of our said lord the king to attempt by force and violence to make alterations in the state and constitution, and to excite the subjects of our said lord the king to overturn the established constitution of this kingdom, and to intimidate the legislature of this kingdom by an armed force, on the 16th of December, in the 32d year of the king, in the county of the city of Dublin, wickedly, seditiously, and maliciously did publish a libel of and concerning the government of this kingdom, according to the tenor and effect following:—' Society of United Irishmen to the Volunteers of Ireland,' &c. They state themselves to be a self-created body; they state it vauntingly—they say they have no authority save that of reason, they have no authority in the state. I will therefore consider the language of this paper as that of a body not known to the constitution, calling upon the *subjects* at large, though they scorn to call them so. Let me bring to your minds, that one gentleman thought the address was to a new created body of volunteers; another gentleman thought it was addressed to the original and respectable volunteers; take it either way—if addressed to the new

new created volunteers, it was for the purposes of sedition—and if to the old original volunteers, it would be ſtill more dangerous if they were to succeed with them in altering the constitution by force. It is ſtated, 'William Drennan, president. Archibald Hamilton Rowan, secretary.' This is a strong presumption that Mr. ROWAN was acquainted with every part of the paper; it profeſses upon the face of it that he was secretary of this society. I ſhall come, by and by, to the queſtion of publication; if he publiſhed it, there does ariſe a preſumption that he knew what he publiſhed: I go no farther with that obſervation. He ſays, 'Citizen Soldiers, you firſt took up arms to protect your country from foreign enemies and from domeſtic diſturbances; for the ſame purpoſes it now becomes neceſſary that you ſhould reſume them.' Citizen Soldiers, you firſt took up arms, that is, in my judgment, you took them up originally for theſe two purpoſes; it now becomes neceſſary you ſhould reſume them for thoſe purpoſes. 'A proclamation had been iſſued in England for embodying the militia, and one in Ireland for repreſſing ſeditious aſſociations; in conſequence of both theſe proclamations it is reaſonable to apprehend danger from abroad and danger at home.' The printed paper has been proved and read; it ſays, 'For whence but from apprehended danger are thoſe menacing preparations for war drawn through the ſtreets of this capital (*inuendo*, meaning the city of Dublin)? or whence, if not to create that internal commotion which was not found, to ſhake that credit which was not affected, to blaſt that volunteer honour which has hitherto inviolate?' In my opinion theſe words fall directly within one of theſe heads I have ſtated, as rendering odious to the king's ſubjects the proclamation as inſincere and hypocritical, as creating internal commotions, which it is intended to reſtrain, and

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that embarrassment which was not found; that it went further to the ruin of the country, shaking the credit which was not effected, and blasting the volunteer honor, which was hitherto inviolate, as if it was said to be blasted by the executive government. This was, in my mind, a charge of having created disorder not before existing, of shaking the credit of the country contrary to the duty of government, and blasting that volunteer honor which until this instrument appeared never was violated. It is charging them, in my opinion, as insidiously as the meanest mind can conceive, in a most vital part, the peace and the credit of the country. Whether it was calculated to inflame the minds of the subjects, will be for your consideration, on your oaths. It says, 'There were rumours and suggestions which agitated our old men, our women, and children.' What is that? Why, this is all an imposition of government, they wanted to frighten you by a bugbear. 'Whatever be the motive, or from whatever quarter it arises, alarm has arisen; and you, volunteers of Ireland, are therefore summoned to arms at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution.' Here was another imputation upon government; they have raised apprehensions, and summoned these persons to take up arms. It goes on and says, 'We will not at this day quote authorities for the right of using arms; but we will cry aloud even amidst the storm raised by the witchcraft of a proclamation.' 'We will cry aloud in the storm.' Where or how was it raised? It says, 'By the witchcraft of a proclamation.' Here was an imputation charged upon the proclamations of government as raising a storm in the country. It says, 'To your formation was owing the peace and protection of this island, to your relaxation has been owing its relapse

lapse into impotence and insignificance;' that is, when you were in arms, this island was protected and in peace, and appeared to be of consideration; to your relaxation has been owing its impotence and insignificance, therefore it can only be raised again into importance by your taking up arms. If that is the impression of this paragraph, you will consider whether this is a libel upon the goverment or not. It was a publication not only to the people of this kingdom, but to all the enemies of this nation, saying, that this country was in a state of impotence and insignificance. It goes on and says, 'That to your renovation must be owing its future freedom and its present tranquillity. You are therefore summoned to arms, in order to preserve your country in that guarded quiet which may secure it from external hostility, and to maintain that internal regimen throughout the land, which, superseding a notorious police or a suspected militia, may preserve the blessings of peace by a vigilant preparation for war.' It is impossible in a work of this kind, were it twice as libellous as it is, if it could be so, that it should not be mixed with some professions, some parts better than others; it must profess something to be received. But it complains of a police and a militia that is suspected. It says, if you do not supersede a police and militia, you cannot preserve the blessings of peace. I say, therefore, in my opinion, no words can be more inflammatory than these are. You are charging the police as an evil sort of an establishment; it is called a 'notorious police:' and the militia as consisting of persons proper to be suspected, not to be confided in. It says, 'You must preserve the blessings of peace, by a vigilant preparation for war. Citizen soldiers, to arms! take up the shield of freedom and the pledges of peace.' What does that say? Your arms only are the shield of freedom and

and pledges of peace; therefore take up arms. 'Peace the motive and end of your virtuous institution. War, an occasional duty, ought never to be made an occupation. Every man should become a soldier in defence of his rights.' Was it necessary to call them together; if their rights were not attacked, why invite them to collect themselves to defend that right? It says, 'No man ought to continue a soldier for offending the rights of others. The sacrifice of life in the service of our country is a duty much too honorable to be entrusted to mercenaries.' They assume, or endeavour to assume, the power of the sword, and of degrading the king's forces from that power with which they are entrusted. It says, the duty we suggest is too honorable for mercenaries: is not this saying, Do not trust to the military, and at that time when by public authority it was declared that the country was in danger. The volunteers, in that paper, were called upon to stand to their arms. Every expression of solicitation and stimulation is used. The volunteers were called up to resume their arms; the nation was impotent and insignificant without it. Citizens, to arms! you are summoned to arms: take up arms in spite of a notorious police and a suspected militia, and in spite of two proclamations. You are to do your duty to preserve good order in your vicinage, in spite of a police and fencible militia, for they resist peace, and you are to do your duty in spite of those constituted authorities; and the phrase is varied, you are invited by the proclamation, that is, this proclamation has done as much mischief as those men they condemn. 'It is only by the military array of men in whom they confide, whom they have been accustomed to revere as guardians of domestic peace, the protectors of their liberties and lives, that the present agitation of the people can be stilled, that tumult and licentiousness can be repressed, obedience secured

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to existing law, and a calm confidence diffused through the public mind, in the speedy resurrection of a free constitution, of liberty and of equality,—words which we use for an opportunity of repelling calumny.' That is, it is only by a military array of men you can have a free constitution; that is as much as to say, the people of Ireland have not a free constitution. Whether that be the meaning of the paper, as charged in the information, will be for your consideration. The words liberty and equality are introduced for an opportunity, say they, of repelling calumny. Where did it come from? Why did the society find it necessary to repel it? How did they repel it? By the words liberty and equality, which they think proper to explain in this way: 'By liberty we never understood unlimited freedom, nor by equality the levelling of property, or the destruction of subordination. This is a calumny invented by that faction or that gang; which misrepresents the king to the people, and the people to the king; traduces one half of the nation to cajole the other; and, by keeping up distrust and division, wishes to continue the proud arbitrators of the fortune and fate of Ireland.' Here, he says, a faction or gang misrepresents the king to the people. Is not this an aspersion endeavouring to render the governing power odious? What is this gang which he says misrepresents the king to the people? I leave you to determine. Why is the misrepresentation? The paper insinuates, for the purposes of power, which they abuse. 'Liberty is the exercise of all our rights, natural and political, secured to us and our posterity by a real representation of the people; and an equality is the extension of the constituent to the fullest dimensions of the constitution, of the elective franchise to the whole body of the people, to the end that government, which is collective power, may be guided by

by collective will.' These are terms, gentlemen, which you may probably understand, though they are conveyed in an unascertained and declamatory style.—Gentlemen of the jury, at the time that a qualification of a voter to give his suffrage to a candidate for a seat in parliament was originally ascertained, forty shillings was equivalent then, as it is calculated, to forty pounds of our present currency; from the time of Henry I. to Queen Anne, the value of money had advanced in a ratio of one to twelve; from that time to this it has been as one to twenty; so that a man then having an estate of twenty shillings a year, was equal to a man's having an estate of twenty pounds of our present money. The elective franchise never was in the whole body of the people of Great Britain or Ireland *. It says, 'That legislation may originate from public reason, keep pace with public improvement, and terminate in public happiness.—If our constitution be imperfect, nothing but a reform in representation will rectify its abuses.' In figurative abstracted expressions it is not easy to ascertain the meaning; although you have an impression of the object. This may be a very innocent proposition; but to me it may be a very wicked one, when applied to be obtained in the manner here pointed out. It says, 'Nothing but a reform will rectify its abuses—nothing but a reform will perpetuate its blessings;' —and then it goes on and says, 'We now address you as citizens,' &c. Not a word of *subjects* from beginning to end—that is a word driven out of fashion, at least in this publication—'Seduction made them soldiers, but nature made them men.' What had this charge to the soldiers to do with a parliamentary reform? I quarrel not with the composition, it is not my duty; but in my mind here is a direct charge upon the military, that they were imposed

* Vide Prynne. Brev. Parl. red. p. 187. & a Whitelock, p. 90, *contra.*

upon, that seduction had made them soldiers. The sword is put into the hands of the sovereign, he is vested with it by the constitution, and yet this paper says it was made an instrument of seduction. 'We address you without any authority, save that of reason; and if we obtain the coincidence of public opinion, it is neither by force nor stratagem, for we have no power to terrify, no artifice to cajole, no fund to seduce—here we sit without mace or beadle, neither a mystery nor a craft, nor a corporation.'

"Here they acknowledge they had no proper authority to call the people to arms, which they assume to do by that publication; they avow that this society did make no corporate body or legal authority. They add, 'In four words lies all our power, *Universal Emancipation and Representative Legislature.* Yet we are confident, that on the pivot of this principle, a convention, still less a society, less still a single man, will be able first to move, and then to raise the world.' I rest here a little to consider what idea this writer must have of the power of the paper, when a single man will be able first to move and then to raise the world; one of the charges is, that the paper intended to stir the people to arms—it is an admission here, a profession, a vaunt, that the society, nay less, a single man, may move and then raise the world; the expression is not one kingdom, but to raise the world. If any thing like it has happened, it is a miserable consideration. 'We therefore wish for Catholic emancipation without any modification; but still we consider this necessary enfranchisement as merely the portal to the temple of national freedom; wide as this entrance is—wide enough to admit three millions—it is narrow, when compared to the capacity and comprehension of our beloved principle, which takes in every individual of the

the Irish nation.' It is but a portal to freedom: what, unqualified emancipation!—It is for you to consider what the beloved principle is. Emancipating three millions is opening a portal—what portal? One which takes in every individual of the Irish nation—where? Into power, into the elective franchise; it embraces all that think, and feels for all that suffer. 'The Catholic cause is subordinate to our cause, and included in it; for, as United Irishmen, we adhere to no sect but to society, to no creed but to Christianity, to no party but the whole people. In the sincerity of our souls do we desire Catholic emancipation: but were it obtained to-morrow, to-morrow would we go on, as we do to-day, in the pursuit of that reform which would still be wanting to ratify their liberties as well as our own.' You, Roman Catholics, emancipated to-morrow, will not stop us, we will go on; and unless you go on with us, it will not be sufficient to establish your liberty. 'For both these purposes, it appears necessary that provincial conventions should assemble preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies of inferior authority; and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness, the union of affection and exertion will dissolve, and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character and risque the tranquillity of

the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be, as it were, knit with the soul of the nation: unless the sense of the Protestant people be, on their part, as fairly collected and as judiciously directed, unless individual exertion consolidates into collective strength, unless the particles unite into mass, we may perhaps serve some person or some party for a little, but the public not at all: the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by a well-timed reform, and to save their country in mercy to themselves.'

"Gentlemen, this last paragraph is a menace; for if the proposal made is not accepted, a revolution is threatened. The paper in question proceeds in the following words: 'The 15th of February approaches, a day ever memorable in the annals of this country, as the birth-day of New Ireland; let parochial meetings be held as soon as possible; let each parish return delegates. Let the sense of Ulster be again declared from Dungannon, on a day auspicious to union, peace and freedom, and the spirit of the north will again become the spirit of the nation. The civil assembly ought to claim the attention of the military associations.' The civil assembly was to be attended by military forces; was not the intention to alter the constitution? 'We have addressed you, citizen soldiers, on this subject; from a belief that your body, uniting conviction with zeal, and zeal with activity, may have much influence over your countrymen, your relations and friends.' Armed citizens was the favorite object that was to be gained; it says, 'We presume not at

at present to fill up the plan or pre-occupy the mode of its execution; we have thought it our duty to speak—answer us by actions. You have taken time for consideration: fourteen long years are elapsed since the rise of your associations.'—This part is very material; it says to the people, 'Take up your arms!' and it says, 'Answer us by actions.' What are the actions of men in arms? Armed associations will support the different meetings. We have spoken out to you; answer us with your actions. 'Fourteen long years are elapsed since the rise of your associations; and in 1782 did you imagine that in 1792 this nation would still remain unrepresented? How many nations, in this interval, have gotten the start of Ireland?' How far Ireland has been backward in the number of good subjects, have they asked? No. The question here is, how many nations have gotten the start of Ireland? What is meant by this start? What nations are there that have in fourteen years advanced more than ourselves in happiness? None. What actions of other nations would that publication recommend to Ireland to follow? It concludes with this sentence: 'How many of our countrymen have sunk into the grave?' Gentlemen, I have gone through the paper mentioned in the information, and made such observations as I thought necessary. I do as it is my duty, tell you, that I think it deserves the appellations given to it by the information. I take it to be a scandalous and seditious libel; but that is my opinion only. Gentlemen of the jury, it is you who are to decide this question, whether you think it is a scandalous or seditious libel? The verdict will be yours, and not mine.

"Gentlemen, in order to support this prosecution, the first witness that was produced is John Lyster; he told you (here his lordship stated the testimony of Lyster,

as given upon his direct examination.) On his cross-examination he gave an account of the manner in which he communicated this matter to Mr. Kemmis, the crown solicitor; said he would communicate to him what he knew; produced the paper that was read in part by Mr. ROWAN. 'Said he did not know where Mr. ROWAN stopt reading. Says he, the witness, did not purchase his commission as ensign in the army; got it through the interest of Lady Hobart, his relation. The witness attested two bonds, there was an issue directed to try whether those bonds were genuine. Was asked whether he was examined as a witness at that trial; believes he was examined as a witness, the issue was tried before Mr. Justice Boyd; there was an award of 200*l.* out of 800*l.* Says Mr. Lambert filed a bill against him about a note for 147*l.* which Peter Hamilton passed to witness. Attempts were made to impeach the credit of this witness upon three or four grounds: 1st, He was a witness to the bonds which were alleged to have been forged—an unfair transaction. 2d, That he got the note from a person alleged to have been insane. 3d, That he had got a commission. 4th, That it was not probable he made this memorandum. I can only say, he has given a rational account of this business; but it is your duty to judge of his credit; it is my duty to make observations, which it is your duty to reject if they are not well founded. He says he is an ensign in the 40th regiment. He got the commission through the interest of a relation; and it appears the arbitrators did give his brother since, part of the demand, by which, if it weighed a feather in the case, they thought the bond was not a forgery. Says it was usual to take memorandums on getting papers of this kind. Says there was about 150 or 200 volunteers in the room. Was Lyster's evidence not satisfactory to you, he was the only

witness to this great part of the case. This observation has been made: 'What! 150 persons present, and not one of them comes forward to attest the innocence of Mr. ROWAN!'—150 Volunteers or United Irishmen, and not one comes forward—many of them would have been proud to assist him; their silence speaks a thousand times more strong than any cavilling upon this man's credit; the silence of such a number is a volume of evidence in support of the prosecution.—But the next witness does, in my apprehension, as far as he goes, confirm every word said by Lyster. Morton says, he saw numbers of persons in the room doing some business at the table. Saw Mr. Tandy and Mr. ROWAN in the room. The witness had seen them before that day. He identified Mr. ROWAN in court. He appeared to take an active part in the business. Witness got admission into the gallery. He saw a bundle of papers on the table, several were distributed to the mob in the street, who called out for more. The witness got a paper, which he gave to a person who said he had lost it. Witness said he heard part of a paper read, containing the words 'Citizen Soldiers to arms!' If it stood upon this man's evidence, here was not evidence of publication; and if it rested upon him alone, you should acquit the defendant; but as corroborating the testimony of Lyster, it is very material. If the counsel for the defendant intended to discredit the witnesses for the prosecution, they have failed. A gentleman from Galway, a Mr. Blake, was produced, who says he now lives in Dublin, gave his evidence as to Lyster, which I shall come to by-and-by. Morton's credit was not questioned. Morton, on his cross-examination, said, he was an apprentice to a goldbeater.—Believes the persons he saw at the room in

Cope-street were in the uniform of the old volunteers—Is sure he saw Mr. ROWAN there—Some of the persons wore scarlet with different coloured facings—Witness said he could see from the gallery what was done at the table. He gave the paper, the day he received it, to a person in the house where the Dublin Journal is printed. The paper was then read which I have stated to you, and you have heard so much of. Here the prosecution was rested. On the part of the defendant was produced Mr. Francis Blake, to shew that John Lyster was a person not to be credited upon his oath. Mr. Blake was asked whether Lyster was a man to be believed upon his oath; he answered he could not say he is not to be believed upon his oath; but he would hesitate. The witness was produced to shew that Lyster should not be believed upon his oath, but Blake said no such thing. In a question, whether the oath of one man ought to be received, where another man swears he ought not to be believed upon his oath; then you would have one man's oath against another. The credit of Lyster is not affected by what Mr. Smyth the second witness has said. The third witness to this point was Mrs. Hatchell; she said she knew John Lyster. She was asked whether he was to be believed upon his oath? She said, according to her opinion, he was not to be believed upon his oath—She said the witness, John, had prevailed on his brother to quit his wife, and said he was married to another woman, which was not truth—Said she heard declarations from John's elder brother, and that was one of the reasons why she said the witness, John, ought not to be believed upon his oath. In the usual course of evidence no proof has been adduced to prove that the witness Lyster ought not to be believed upon his oath.

" Gentlemen

"Gentlemen of the jury, I think this is the evidence on both sides, as correctly as I have been able to take it. As to the fact of publication, it is my duty to tell you, there is very strong evidence that Mr. ROWAN did publish that paper, and did publish it knowing what he published; and as to the other matter, whether it is a libel, I have told you I thought the matter libellous—libellous in the extreme; I now tell you, that is my opinion. If you, upon the whole matter, believe, upon your oaths, that Mr. ROWAN published the paper, and with the criminal intention stated in the information, and for the purposes ascribed to him, you ought to find him guilty, for I think the paper entitled to, and deserves the appellation annexed to it—it is a seditious libel. If you believe he did not publish it; if you disbelieve the evidences which have been uncontradicted; if you believe he published it by *mistake* or *ignorance*, not meaning to publish this paper, which might happen, but of which there is not a tittle of evidence in this case, you will find him not guilty. I will state this direction in other words; if you find him guilty, it must be, because you believe in your consciences he published it, and that you believe the innuendos are true; meaning, as well as you understand this paper, reading it separately or collectively together, that he published it with a criminal intention; that is, adopting its sense and meaning. If you acquit him, it must be, because you do not believe he published it, or that he did not mean to adopt its sense and meaning. I must tell you, his thinking it not mischievous, is not a reason why you should acquit him. His thinking he was doing right, if you believe the intention of the paper was to raise forces to intimidate the legislature, which is the great object complained of, though he was thinking he was right to accomplish his object by every means, will not be an excuse; that would lead to the acquittal of every felon upon earth. If a man

was

was accused of a felony, and he thought he was doing a right thing to murder his neighbour, thinking he was doing a right thing, would be no excuse to him. If the defendant's object was merely a reform in parliament, yet if he endeavoured by force, or by illegal means to obtain it, you ought to find him guilty. I have stated the facts, and made such observations as occur to me to be necessary —I have stated the point of crimination, and I now leave to you to dispose of the question, and have not the least doubt you will do as becomes you. If I have been defective, I shall be corrected by my brethren, whom you will hear with pleasure and information."

Verdict GUILTY.

SPEECH of The Hon. THOMAS ERSKINE (now LORD ERSKINE) in defence of JOHN STOCKDALE, for a Libel against the HOUSE of COMMONS, before Lord KENNYON, in the Court of King's Bench.

The Information charged the defendant with publishing a certain false and malicious Libel, concerning the Impeachment of WARREN HASTINGS, and concerning the Commons of Great Britain in Parliament assembled.

"Gentlemen of the jury,

"Mr. STOCKDALE, who is brought as a criminal before you for the publication of this book, has, by employing me as his advocate, reposed what must appear to many an extraordinary degree of confidence; since, although he well knows, that I am personally connected in friendship with most of those whose conduct and opinions are principally arraigned by its author, he nevertheless commits to my hands his defence and justification. A trust apparently so delicate and singular, vanity is but too apt to

to whisper an application of to some fancied merit of one's own; but it is proper, for the honor of the English bar, that the world should know such things happen to all of us daily, and of course; and that the defendant without any sort of knowledge of me, or any confidence that was personal, was only not afraid to follow up an accidental retainer, from the knowledge he has of the general character of the profession.

"Happy indeed is it for this country that, whatever interested divisions may characterize other places of which I may have occasion to speak to-day, however the councils of the highest departments of the state may be occasionally distracted by personal considerations, they never enter these walls to disturb the administration of justice. Whatever may be our public principles, or the private habits of our lives, they never cast even a shade across the path of our professional duties. If then, this be the characteristic even of the bar of an English court of justice, what sacred impartiality may not every man expect from its jurors and its bench?

"As, from the indulgence which the court was yesterday pleased to give to my indisposition, this information was not proceeded on when you were attending to try it, it is probable you were not altogether inattentive to what passed on the trial of another indictment, prosecuted also by the House of Commons; and therefore, without a re-statement of the same principles, and a similar quotation of authorities to support them, I need only remind you of the law applicable to this subject, as it was then admitted by the Attorney-General, in concession to my propositions, and confirmed by the higher authority of the court, viz.

"First, that every information or indictment must contain such a description of the crime, that the defendant

may

may know what crime it is which he is called upon to answer.

" Secondly, that the jury may appear to be warranted in their conclusion of guilty or not guilty.

" And, lastly, that the court may see such a precise and definite transgression upon the record, as to be able to apply the punishment which judicial discretion may dictate, or which positive law may inflict.

" It was admitted also to follow as a mere corollary from these propositions, that where an information charges a writing to be composed or published of and concerning the Commons of Great Britain, with an intent to bring that body into scandal and disgrace with the public, the author cannot be brought within the scope of such a charge, unless the jury, on examination and comparison of the whole matter written or published, shall be satisfied that the particular passages charged as criminal, when explained by the context, and considered as part of one entire work, were meant and intended by the author to vilify the House of Commons as a body, and were written of and concerning them in Parliament assembled.

" These principles being settled, we are now to see what the present information is.—It charges, that the defendant, ' unlawfully, wickedly, and maliciously devising, contriving, and intending to asperse, scandalize, and vilify the Commons in Parliament assembled; and most wickedly, and audaciously to represent their proceedings as corrupt and unjust, and to make it believed and thought, as if the Commons of Great Britain in Parliament assembled were a most wicked, tyrannical, base, and corrupt set of persons, and to bring them into disgrace with the public.'—The defendant published—*What?* *Not* those latter ends of sentences, which the Attorney-

Attorney-General has read from his brief, as if they had followed one another in order in this book.—*Not* those scraps and tails of passages which are patched together upon this record, and pronounced in one breath, as if they existed without intermediate matter in the same page, and without context any where.—*No*—This is not the accusation, even mutilated as it is: For the information charges, *that, with intention to vilify the House of Commons*, the defendant published the whole book describing it on the record by its title:

" ' A Review of the Principal Charges against Warren Hastings, Esq. late Governor General of Bengal;' *in which, amongst other things, the matter particularly selected is to be found.* Your inquiry therefore is not confined to, Whether the defendant published *these* selected parts of it; and whether, looking at them as they are distorted by the information, they carry in fair construction the sense and meaning which the inuendos put upon them; but whether the author of the *entire work*, I say the author, since, if he could defend himself, the publisher unquestionably can—whether the author wrote the volume which I hold in my hand, as a free, manly, *bonâ fide* disquisition of criminal charges against his fellow-citizen; or whether the long eloquent discussion of them, which fills so many pages, was a mere cloak and cover for the introduction of the supposed scandal imputed to the selected passages; the mind of the writer being all along intent on traducing the House of Commons, and not on fairly answering their charges against Mr. Hastings.

" This, gentlemen, is the principal matter for your consideration; and therefore, if after you shall have taken the book itself into the chamber which will be provided for

for you, and read the whole of it with impartial attention; if, after the performance of this duty, you can return here, and with clear consciences pronounce upon your oaths, that the impression made upon you by these pages is, that the author wrote them with a wicked, seditious, and corrupt intentions, charged by the information; you have then my full permission to pronounce the defendant guilty. But if on the other hand, the general tenor of the composition shall impress you with respect for the author, and point him out to you as a man mistaken, perhaps, himself, but not seeking to deceive others:—If every line of the work shall present to you an intelligent animated mind, glowing with a Christian compassion towards a fellow-man, whom he believed to be innocent, and with a patriot zeal for the liberty of his country, which he considered as wounded through the sides of an oppressed fellow-citizen; if this shall be the impression on your consciences and understandings, when you are called upon to deliver your verdict; then hear from me, that you not only work private injustice, but break up the press of England, and surrender her rights and liberties for ever, if you convict him.

"Gentlemen, to enable you to form a true judgment of the meaning of this book, and of the intention of its author, and to expose the miserable juggle that is played off in the information, by the combination of sentences, which in the work itself have no bearing on one another, I will first give you the publication, as it is charged upon the record, and presented by the Attorney-General in opening the case for the crown; and I will then, by reading the interjacent matter, which is studiously kept out of sight, convince you of its true interpretation. The information, beginning with the first page of the book,

book, charges, as a libel upon the House of Commons, the following sentence:

'The House of Commons has now given its final decision with regard to the merits and demerits of Mr. Hastings.—The grand inquest of England have delivered their charges, and preferred their impeachment; their allegations are referred to proof; and from the appeal to the collective wisdom and justice of the nation in the supreme tribunal of the kingdom, and the question comes to be determined, whether Mr. Hastings be *guilty or not guilty?*'

"It is but fair, however, to admit, that this sentence, which the most ingenious malice cannot torture into a criminal construction, is charged by the information rather as introductory to what is made to follow it, than as libellous in itself; for the Attorney-General, from this introductory passage in the first page, goes on at a leap to page *thirteenth*, and reads, almost without a stop, as if it immediately followed the other, 'What credit can we give to multiplied and accumulated charges, when we find that they originate from misrepresentation and falsehood?'—From these two passages thus standing together, *without the intervenient matter which occupies thirteen pages*, one would imagine, that instead of investigating the probability of the guilt imputed to Mr. Hastings; instead of carefully examining the charges of the Commons, and the defence of them which had been delivered before them, or which was preparing for the Lords: the author immediately had decided, that the act of the Commons had originated from misrepresentation and falsehood.

"Gentlemen, in the same manner a veil is cast over all that is written *in the next seven pages*: For knowing that the context would help to the true construction, not only

only of the passages charged before, but of those in the sequel of this information; the Attorney-General, aware that it would convince every man who read it, that there was no intention in the author to calumniate the House of Commons, passes over by another leap to *page twenty*; and in the same manner, without drawing breath, and as if it directly followed the two former sentences *in the first and thirteenth pages*, reads from page 20th.

'An impeachment of error in judgment with regard 'to the quantum of a fine, and for an intention that 'never was executed, and never known to the offending 'party, characterizes a tribunal of inquisition rather than 'a court of parliament.'

"From this passage, by another vault, he leaps over *thirty-one pages more, to page fifty one*; where he reads the following sentence, which he mainly relies on, and upon which I shall shortly trouble you with some observations.

'Thirteen of them passed in the House of Com- 'mons, not only without investigation, but without 'being read; and the votes were given without inquiry, 'argument, or conviction. A majority had determined 'to impeach; opposite parties met together, and *justled* '*in the dark*, to perplex the political drama, and bring 'the hero to a tragic catastrophe.'

"From thence, deriving new vigour from every exertion, he makes his last grand stride *over forty pages*, almost to the end of the book, charging a sentence *in the ninety-fifth page*. So that out of a volume of *one hundred and ten pages*, the defendant is only charged with a few scattered fragments of sentences picked out of *three or four*. Out of a work, consisting of about two thousand five hundred and fifty lines, of manly spirited eloquence, only

only forty or fifty lines are culled from different parts of it, and artfully put together, so as to rear up a libel out of a false context by a supposed connexion of sentences one with another, which are not only entirely independent, but which, when compared with their antecedents, bear a totally different construction.—In this manner, the greatest works upon government, the most excellent books of science, the sacred scriptures themselves, may be distorted into libels; by forsaking the general context, and hanging a meaning upon selected parts:—Thus, as in the text put by Algernon Sidney,

"The fool has said in his heart there is no God."

"The Attorney-General on the principle of the present proceeding against this pamphlet, might indict the publisher of the Bible for blasphemously denying the existence of heaven, in printing '*there is no God.*' For these words alone, without the context, would be selected by the information; and the Bible, like this book, would be *underscored* to meet it. Nor could the defendant in such a case have any possible defence, unless the jury were permitted to see, by the book itself, that the verse, instead of denying the existence of the divinity, only imputed that imagination to a fool.

"Gentlemen, having now gone through the Attorney-General's reading, the book shall presently come forward and speak for itself.—But before I venture to lay it before you, it is proper to call your attention to how matters stood at the time of its publication; without which the author's meaning and intention cannot possibly be understood. The commons of Great Britain in parliament assembled had accused Mr. Hastings, as governor-general of Bengal, of high crimes and misdemeanors; and

their jurisdiction for that high purpose of national justice was unquestionably competent. But it is proper you should know the nature of this inquisitorial capacity.—The commons in voting an impeachment, may be compared to a grand jury finding a bill of indictment for the crown: neither the one nor the other can be supposed to proceed, but upon the matter which is brought before them; neither of them can find guilt without accusation, nor the truth of accusation without evidence.

"When, therefore, we speak of the *accuser* or *accusers* of a person indicted for any crime, although the grand jury are the accusers *in form*, by giving effect to the accusation; yet in common parlance we do not consider them the responsible authors of the prosecution. If I were to write of a most wicked indictment, found against an innocent man, which was preparing for trial, nobody who read it would conceive I meant to stigmatize the grand jury that found the bill; but it would be inquired immediately who was the prosecutor, and who were the witnesses on the back of it. In the same manner I mean to contend, that if this book is read with only common attention, the whole scope of it will be discovered to be this:

"That, in the opinion of the author, Mr. Hastings had been accused of malicious administration in India, from the heat and spleen of political division in parliament, and not from any zeal for national honor and justice; that the impeachment did not originate from government, but from a faction banded against it, which, by misrepresentation and violence, had fastened it on an unwilling house of commons; that, prepossessed with this sentiment, (which, however unfounded, makes no part of the present business, since the publisher is not called before you for defaming individual members of the house of

of commons, but for a contempt of the commons as a body,) the author pursues the charges, article by article; enters into a warm and animated vindication of Mr. Hastings, by regular answers to each of them; and that, as far as the mind and soul of a man can be visible, I might also say, embodied in his writings, his intention throughout the whole volume appears to be, to charge with injustice the private accusers of Mr. Hastings, and not the house of commons as a body; which undoubtedly, rather reluctantly gave way to, than heartily adopted the impeachment. This will be found to be the palpable scope of the book; and no man who can read English, and who at the same time will have the candor and common sense to take up his impressions from what is written in it, instead of bringing his own along with him to the reading of it, can possibly understand it otherwise.—But it may be said, that admitting this to be the scope and design of the author, what right had he to canvass the merits of an accusation upon the records of the Commons; more especially while it was in the course of legal procedure. This, I confess, might have been a serious question, but the Commons, *as prosecutors of this information*, seemed to have waved, or forfeited, their right to ask it. Before they sent the Attorney-General into this place, to punish the publications of *answers* to their charges, they should have recollected that their want of circumspection in the maintenance of their privileges, and in the protection of persons accused before them, had given to the public *the charges themselves*, which should have been confined to their journals. The course and practice of parliament might warrant the printing of them for the use of their own members, but here the publication should have stopt, and all further progress been resisted by authority.—If they were resolved to consider *answers*

on their charges as a contempt of their privileges, and to punish the publication of them by such severe prosecutions, it would have well become them to have begun first with those printers who, by publishing *the charges themselves* throughout the whole kingdom, or rather throughout the whole civilized world, were anticipating the passions and judgments of the public against a subject of England upon his trial, so as to make the publication *of answers* to them, not merely a privilege, but a debt and duty to humanity and justice. The commons of Great Britain claimed and exercised the privileges of questioning the innocence of Mr. Hastings by their impeachment; but as, however questioned, it is still to be presumed and protected, until guilt is established by judgments, he whom they had accused had an equal claim upon their justice, to guard him from prejudice and misrepresentation until the hour of trial.

"Had the commons, therefore, by the exercise of their high, necessary, and legal privileges, kept the public aloof from all canvass of their proceedings, by an early punishment of printers, without reserve or secrecy, sent out *the charges* into the world from a thousand presses in every form of publication, they would then have stood upon ground to-day from whence no argument of policy or justice could have removed them; because nothing can be more incompatible with either, than appeals to the many upon subjects of judicature, which, by common consent, a few are appointed to determine, and which must be determined by facts and principles, which the multitude have neither leisure nor knowledge to investigate. But then let it be remembered, that it is for those who have the authority to accuse and punish, to set the example of, and to enforce this reserve, which is necessary for the ends of justice.—Courts of law, therefore,

in England, never endure the publication of *their* records; and the prosecutor of an indictment would be attacked for such a publication; and upon the same principle, a defendant would be punished for anticipating the justice of his country, by the publication of his defence, the public being no party to it, until the tribunal appointed for its determination be open for its decision.

" Gentlemen, you have a right to take judicial notice of these matters, without the proof of them by witnesses; for jurors may not only without evidence found their verdicts on facts that are notorious, but upon what they know privately themselves, after revealing it upon oath to one another; and therefore, you are always to remember, that this book was written when the *charge* against Mr. Hastings, *to which it is an answer*, were, to the knowledge of the commons, (for we cannot presume our watchmen to have been asleep) publicly hawked about in every pamphlet, magazine, and newspaper in the kingdom.—Gentlemen, you well knew with what a curious appetite these charges were devoured by the whole public, interesting as they were, not only from their importance, but from the merit of their composition; certainly not so intended by the honorable and excellent composer (Mr. Burke) to oppress the accused, but because the commonest subjects swell into eloquence under the touch of his sublime genius.

" Thus, by the remissness of the Commons, *who are now the prosecutors of this information*, a subject of England, who was not even charged with contumacious resistance to authority, much less a proclaimed outlaw, and therefore fully entitled to every protection which the customs and statutes of the kingdom held out for the protection of British liberty, saw himself pierced with the arrows of thousands and ten thousands of libels.

"Gentlemen, before I venture to lay the book before you, it must be yet further remembered, for the act is equally notorious, that under these inauspicious circumstances, the trial of Mr. Hastings, at the bar of the Lords, had actually commenced long before its publication. There the most august and striking spectacle was daily exhibited, which the world in any age of it ever witnessed. A vast stage of justice was erected, awful from its high authority, splendid from its illustrious dignity, venerable from the learning and wisdom of its judges, captivating and affecting from the mighty concourse of all ranks and conditions which daily flocked into it, as to a theatre of pleasure; there, when the whole public mind was at once awed and softened to the impression of every human affection, there appeared day after day, one after another, men of the most powerful and exalted talents, eclipsing by their accusing eloquence the most boasted harangues of antiquity; rousing the pride of national re-entment, by the boldest invectives against broken faith and violated treaties, and shaking the bosom with alternate pity and horror, by the most glowing pictures of insulted nature and humanity. Ever animated and energetic, from the love of fame, which is the inherent passion of genius; firm and indefatigable, from a strong prepossession of the justice of their cause.—Gentlemen, when the author sat down to write the book now before you, all this terrible, unceasing, exhaustless artillery of warm zeal, matchless vigor of understanding, consuming and devouring eloquence, united with the highest dignity, was daily, and without prospect of conclusion, pouring forth upon one private unprotected man, who was bound to hear it, in the face of the whole people of England, with reverential submission and silence.

"Gentlemen,

" Gentlemen, I do not complain of this as I did of the publication of the charges, because it is what the laws allowed and sanctioned in the course of a public trial; but when it is remembered we are not angels, but weak fallible men, and that even the noble judges of that high tribunal are cloathed beneath their crimes with the common infirmities of man's nature, it will bring us all to a proper temper for considering the book itself, which will in a few moments be laid before you.—Gentlemen, it was under all these circumstances, and amidst the blaze of passion and prejudice, which the evidence I have been endeavouring faintly to describe to you might be supposed likely to produce, that the author, whose name I will now give to you, sat down to compose the book which is prosecuted to-day as a libel.—The history of it is very short and natural. The Rev. Mr. Loggan, minister of the gospel at Leith in Scotland, a clergyman of the purest morals, and as you will see by-and-by of very superior talents, well acquainted with the human character, and knowing the difficulty of bringing back public opinion after it is settled on any subject, took a warm unbought, and unsolicited interest in the situation of Mr. Hastings, and determined, if possible, to arrest and suspend the public judgment concerning him. He felt for the situation of a fellow-citizen, exposed to a trial which, whether right or wrong, is undoubtedly a severe one; a trial, certainly not confined to a few criminal acts, like those we are accustomed to, but comprehending the transactions of a whole life, and the complicated politics of entire nations; a trial, which had neither visible limits to its duration, bounds to its existence, nor circumscribed compass for the grasp of memory or understanding; a trial, which had therefore

broke loose from the common forum of decision, and had become the universal topic of discussion in the world, superseding not only every other grave pursuit, but every other fashionable dissipation.

" Gentlemen, the question you have therefore to lay upon all this matter, is extremely simple; it is neither more nor less than this: at a time when the charges against Mr. Hastings were, by the implied consent of the commons, in every hand and on every table, when by their managers, the lightning of eloquence was incessantly consuming him, and flashing in the eyes of the public, when every man was with perfect impunity saying, and writing, and publishing, just what he pleased of the supposed plunderer and devastator of nations; would it have been criminal of Mr. Hastings himself to have reminded the public, that he was a native of this free land entitled to the common protection of her justice, and that he had a defence in his turn to offer to them, the outlines of which he implored them, in the mean time, to receive, as an antidote to the unlimited and unpunished poison in circulation against him?—Gentlement this is, without color or exaggeration, the true question you are to decide. For I assert, without the hazard of contradiction, that if Mr. Hastings himself could have stood justified or excused in your eyes, for publishing this volume in his own defence, the author, if he wrote it *bonâ fide* to defend him, must stand equally excused and justified; and if the author be justified the publisher cannot be criminal, unless you had evidence that it was published by him with a different spirit and intention from those in which it was written. The question therefore is correctly what I just now stated it to be. Could Mr. Hastings have been condemned to infamy for writing this book?

" Gentlemen,

"Gentlemen, I tremble with indignation, to be driven to put such a question in England. Shall it be endured that a subject of this country, instead of being arraigned and tried for some single act in her ordinary courts where the accusation, as soon at least as it is made public is followed within a few hours by the decision, may be impeached by the commons for the transactions of twenty years, that the accusation shall spread as wide as the region of letters, and the accused shall stand day after day, and year after year, as a spectacle before the public; which shall be kept in a perpetual inflammation against him; yet that he shall not, without the severest penalties, be permitted to submit any thing to the judgment of mankind in his defence? If this be law (which it is for you to day to decide), such a man has no trial; that great hall, built by our fathers for English justice, is no longer a court, but an altar; and a Englishman, instead of being judged in it by God and his country, is a victim to a sacrifice.—Gentlemen, you will carefully remember that I am not presuming to question the right or the duty of the commons of Great Britain to impeach; neither am I arraigning the propriety of their selecting, as they have done, the most extraordinary persons for ability which the age has produced to manage their impeachment. Much less am I censuring the managers themselves, charged with the conduct of it before the lords, who were undoubtedly bound by their duty to the house, and to the public, to expatiate upon the crimes of the persons whom they had accused.—None of these points are questioned by me, nor are in this place questionable. I only desire to have it decided, whether if the commons, when national expediency happens to call in their judgment for an impeachment, shall, instead of keeping it on their own records, and carrying it with due solemnity to the peers for

for trial, permit it without censure or punishment to be sold like a common newspaper in the shop of my client, so crowded with their own members, that no plain man, without privilege of parliament, can hope even for a sight of the fire on a winter's day, every man buying it, reading it, and commenting upon it, this gentleman himself, who is the object of it, or his friends in his absence, may not, without stepping beyond the bounds of English freedom, put a copy of what is thus published into his pocket, and send for back to the very same shop for publication a *bonâ fide*, rational, able answer to it, in order that the bane and antidote may circulate together, and the public be kept straight till the day of decision. Gentlemen, if you think that this common duty of self-preservation in the accused himself, which nature writes as a law upon the heart of even savages and brutes, is nevertheless too high a privilege to be enjoyed by an impeached and suffering Englishman; or if you think it beyond the office of humanity and justice, when brought home to the hand of a brother or a friend, you will say so by your verdict of GUILTY.—The decision will then be yours; and the consolation mine, that I laboured to avert it, a very small part of the misery which will follow from it is likely to light upon me; the rest will be divided between *yourselves and your children.*—Gentlemen, I observe plainly, and with infinite satisfaction, that you are shocked and offended at my even supposing it possible you should pronounce such a detestable judgment; and that you only require of me to make out to your satisfaction (*as I promised*) that the real scope and object of this book is a *bonâ fide* defence of Mr. Hastings, *and not a cloak and cover for scandal on the house of commons.* Gentlemen, I engage to do this, and I engage for nothing more; I shall make an open manly defence—I mean to torture no expressions from their natural

tural constructions; to dispute no inuendos on the record, should any of them have a fair application; nor to conceal from your notice any unguarded intemperate expressions, which may perhaps be found to chequer the vigorous and animated career of the work. Such a conduct, might, by accident, shelter the defendant, but it would not be the surrender of a very principle on which alone the liberty of the English press can stand; and I shall never defend any man from a temporary imprisonment, by the permanent loss of my own liberty and the ruin of my country. I mean therefore to submit to you, that though you should find a few lines in page thirteen or twenty-one, a few more in page fifty-one, and some in other places, containing expressions bearing on the house of commons even as a body, which if written as independent paragraphs by themselves, would be indefensible libels; yet that you have a right to pass them over in judgment, provided the substance clearly appears to be *bonâ fide* conclusion, arising from the honest investigation of a subject which it was lawful to investigate; and the questionable expressions, the visible effusions of a zealous temper, engaged in an honorable and legal pursuit. After this preparation, I am not afraid to lay the book in its genuine state before you." [*Here Mr. Erskine compared with wonderful ingenuity the several passages of the book, and endeavoured to shew, that the whole work was a* bonâ fide *defence of Mr. Hastings; and that the terms of obloquy were directed against the individual accusers of him and not against the house of commons.*] He then proceeded. "Here, gentlemen," said he, "we must be permitted to pause together a little; for in examining whether these pages were written as an honest answer to the charges of the house of commons, or as a prostituted defence of a notorious criminal, whom the writer believed to be guilty, *truth becomes*

comes material at every step. For, if in any inſtance he be detected of a *wilful* misrepresentation, he is no longer an object of your attention.

" Will the Attorney-General proceed then to detect the hypocriſy of our author, by giving us some detail of the proofs by which these personal enormities have been eſtabliſhed, and which the writer muſt be supposed to have been acquainted with? I ask this as the defender of Mr. STOCKDALE, not of Mr. Hastings, with whom I have no concern.—I am sorry, indeed, to be so often obliged to repeat this protest; but I really feel myself embarrassed with those repeated coincidences of defence which thicken on me as I advance, and which were, no doubt, overlooked by the commons when they directed this interlocutory enquiry into his conduct. I ask then, *as counsel for* Mr. STOCKDALE, whether, when a great state criminal is brought for justice at an immense expence to the public, accused of the most oppressive cruelties, and charged with the robbery of princes and the destruction of nations, it is not open to any one to ask, who are his accusers? What are the sources and the authority of these shocking complaints? Where are the ambassadors or memorials of those princes whose revenues he has plundered?—Where are the witnesses for those unhappy men in whose persons the rights of humanity have been violated? How deeply buried is the blood of the innocent that it does not rise up in retributive judgment to confound the guilty! These surely are questions, which when a fellow citizen is upon a long, painful, and expensive trial, humanity has a right to propose; which the plain sense of the most unlettered man may be expected to dictate, and which all history must provoke from the more enlightened.

" When

" When Cicero impeached Verres, before the great tribunal of Rome, of similar cruelties and depredations in *her* provinces, the Roman people were not left to such enquiries. All Sicily surrounded the forum, demanding justice upon her plunderer and spoiler, with tears and imprecations. It was not by the eloquence of the *orator*, but by the cries and tears of the miserable, that Cicero prevailed in that illustrious cause. Verres fled from the oaths of his accusers and their witnesses, and not from the voice of Tully; who, to preserve the fame of his eloquence, published the five celebrated speeches which were never delivered against the criminal, because he had fled from the city, appalled with the sight of the prosecuted and the oppressed.—It may be said, that the cases of Sicily and India are widely different; perhaps they may; whether they are or not, is foreign to my purpose. I am not bound to deny the possibility of answers to such questions; I am only vindicating *the right to ask them.*

" Gentlemen another passage, arraigned by the information is this:

' An impeachment of *error* in *judgment* with regard to ' the *quantum* of a fine, and for an *intention* that never ' was *executed*, and never known to the offending party, ' characterises a tribunal *inquisition*, rather than a court ' parliament.'

" Gentlemen, I am ready to admit that this sentiment might have been expressed in language more reserved and guarded; but you will look to the sentiment itself, rather than to its dress; to the mind of the writer, and not with the bluntness with which he may happen to express it. It is obviously the language of a warm man, engaged in the honest defence of his friend, and who is brought to what he thinks a just conclusion in argument, which

which perhaps becomes offensive in proportion to its truth. Truth is undoubtedly no warrant for writing what is reproachful of any *private* man; for if a member of society lives within the law, then if he offends it is against God alone, and man has nothing to do with him; and if he transgress the laws, the libeller should arraign him before them, instead of presuming to try him himself. But as to writings on *general subjects*, which are not charged as an infringement on the rights of individuals, but as of a seditious tendency, it is far otherwise.—When in the progress either of legislation or of high national justice in parliament, they who are amenable to no law, are supposed to have adopted through mistake or error a principle which, if drawn into precedent, might be dangerous to the public; I shall not admit it to be a libel *in the course of a legal and* bonâ fide *publication*, to state that such a principle had, *in fact*, been adopted; for the people of England are not to be kept in the dark, touching the proceedings of their own representatives. Let us therefore coolly examine this supposed offence, and see what it amounts to.—First, Was not the conduct of the right honorable gentleman, whose name is here mentioned, exactly what it is represented?—Will the Attorney-General, who was present in the house of commons, say that it was not? Did not the minister vindicate Mr. Hastings in what he *had done*; and was not his consent to that article of the impeachment founded on the intention of levying a fine on the Zemindar for the service of the state, beyond the quantum which he the minister thought reasonable? What else is this but an impeachment of error in judgment in the quantum of a fine?—So much for the firſt part of the sentence, which, regarding Mr. Pitt only, is foreign to our purpose; and as to the last part of it, which imputes the sentiments of the minister to the ma-

jority that followed him with their votes on the question, that appears to be giving handsome credit to the majority for having voted from conviction, and not from courtesy to the minister. To have supposed otherwise, I dare not say, would have been a more *natural* libel, but it would certainly have been a greater one.—The sum and substance therefore of the paragraph is only this. That an impeachment for an error in judgment, is not consistent with the theory or the practice of the English government.—So SAY I. I say without reserve, speaking merely in the abstract, and not meaning to decide upon the merits of Mr. Hastings's cause, that an impeachment for an error in judgment is contrary to the whole spirit of English criminal justice, which, though not binding on the house of commons, ought to be a guide to their proceedings. I say that their extraordinary jurisdiction of impeachment, ought never to be assumed to expose error, or to scourge misfortune, but to hold up a terrible example to corruption and *wilful* abuse of authority by extra-legal pains.—If public men are always punished with due severity, when the source of their misconduct appears to have been *selfishly corrupt, and criminal*, the public can never suffer when their errors are treated with gentleness; for no man from such protection to the magistrate can think lightly of the charge of magistracy itself, when he sees by the language of the saving judgment, that the only title to it is an honest and zealous intention.

"Gentlemen, if at this moment, or indeed in any other in the whole course of our history, the people of England were to call upon every man in this impeaching house of commons, who had given his voice on public questions, or voted in authority civil or military, to answer for the issues of our councils and our wars, and if honest single intentions for the public service were refused

fused as answers to impeachments, we should have many relations to mourn for, and many friends to deplore. For my own part, gentlemen, I feel, I hope for my country as much as any man that inhabits it: but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any minister, or other respectable person, however unfortunate, who had fairly followed the lights of his understanding, and the dictates of his conscience for their preservation.—Gentlemen, this is no theory of mine; it is the language of English law, and the protection which it affords to every man in office, from the highest to the lowest trusts of government.

"In no one instance that can be named, foreign or domestic, did the court of King's Bench ever interpose its extraordinary jurisdiction, by information against any magistrate for the widest departure from the rule of his duty, *without the plainest and clearest proof of corruption.* God forbid that a magistrate should suffer from an error in judgment, if his purpose was honestly to discharge his trust. We cannot stop the ordinary course of justice; but wherever the court has a discretion, such a magistrate is entitled to its protection. I appeal to the noble judge, and to every man who hears me, for the truth and universality of this position. And it would be a strange solecism indeed to assert, that in cases where the supreme court of criminal justice in the nation would refuse to interpose an *extraordinary* though a legal jurisdiction, on the principle that the ordinary execution of the laws should never be exceeded, but for the punishment of malignant guilt, the commons in their judicial capacity, growing out of the same constitution, should reject that principle, and stretch them still further by a jurisdiction still more *eccentric*.—Many impeachments have taken place, because the law *could not* adequately punish the objects of them;

them; but who ever heard of one being set on foot because the law upon principle *would not* punish them?—Many impeachments have been adopted for a higher example than a prosecution in the ordinary courts, but surely never for a different example.—The matter therefore, in the offensive paragraph, is not only an indisputable truth, but a truth in the propagation of which we are all deeply concerned.

"Whether Mr. Hastings, in this instance, acted from corruption, or from zeal for his employers, is what I have nothing to do with; it is to be decided in judgment; my duty stops with wishing him, as I do, an honorable deliverance.—Whether the minister or the commons mean to found this article of the impeachment on mere error without corruption, is likewise foreign to the purpose. The author could only judge from what was said and done on the occasion. He only sought to guard the principle which is a common interest, and the rights of Mr. Hastings under it; and was therefore justified in publishing, that an impeachment, founded in error in judgment, was to all intents and purposes illegal, unconstitutional, and unjust.—Gentlemen, it is now time for us to return again to the work under examination.

The author having discussed the whole of the first article through so many pages, without even the imputation of an incorrect or intemperate expression, except in the concluding passage, the meaning of which I trust I have explained, goes on with the same earnest disposition to the discussion of the second charge, respecting the princess of Oude, which occupies eighteen pages, not one syllable of which the attorney-general has read, and on which there is not even a glance at the house of commons; the whole of this answer is indeed so far from being a mere cloak for the introduction of slander, that I aver

it to be one of the most masterly pieces of writing I ever read in my life: from thence he goes on to the charge of contracts and salaries, which occupies five pages more, in which there is not a glance at the house of commons, nor a word read by the attorney-general. He afterwards defends Mr. Hastings against the charges respecting the opium contracts. Not a glance at the house of commons; not a word by the attorney-general. And, in short, in this manner he goes on with the others to the end of the book.—Now is it possible for any being to believe, that a man, having no other intention than to vilify the house of commons (as this information charges), should yet keep his mind thus fixed and settled as the needle to the pole, upon the serious merits of Mr. Hastings' defence, without ever straying into matter even questionable, except in the two or three selected parts out of two or three hundred pages. This is a forbearance which could not have existed, if calumny and detraction had been the malignant objects which led him to the enquiry and publication. The whole fallacy therefore arises from holding up to view a few detached passages, and carefully concealing the general tenor of the book.

"Having now finished most, if not all of these critical observations, which it has been my duty to make upon this unfair mode of prosecution; it is but a tribute of common justice to the attorney-general, (and which my personal regard for him makes it more pleasant to pay,) that none of my commentaries reflect in the most distant manner upon him; nor upon the solicitor for the crown, who sits near me, who is a person of the most correct honor;—far from it. The attorney-general, having orders to prosecute in consequence of the address of the house to his Majesty, had no choice in the mode; no means at all of keeping the prosecutors before you in

counte-

countenance, but by the course which has been pursued; but so far has he been from enlisting into the cause those prejudices, which it is not difficult to slide into a business originating from such exalted authority, he has honorably guarded you against them, pressing indeed severely upon my client with the weight of his ability, but not with the glare and trappings of his high office.—Gentlemen, I wish that my strength would enable me to convince you of the author's singleness of intention, and of the merit and ability of his work, by reading the whole that remains of it. But my voice is already nearly exhausted; I am sorry my client should be a sufferer by my infirmity.

"Gentlemen, if this book contains a wilfully false account of the instructions given to Mr. Hastings for his government, and of his conduct under them, the author and publisher of it deserve the severest punishment for a mercenary imposition on the public. But if it be true that he was directed to make the safety and prosperity of Bengal the first object of his attention, and that under his administration it has been safe and prosperous; if it be true that the security and preservation of our possessions and revenues in Asia were marked out to him as the great leading principle of his government, and that these possessions and revenues, amidst unexampled dangers, have been secured and preserved; then a question may be unaccountably mixed with your consideration, much beyond the consequence of the present prosecution, involving perhaps the merits of the impeachment itself which gave it birth; a question which the commons, as prosecutors of Mr. Hastings, should, in common prudence, have avoided; unless that, regretting the unwieldy length of their proceedings against him, they wished to

afford him the opportunity of this strange anomalous defence.—For although I am neither his counsel, nor desire to have any thing to do with his innocence, yet, in the collateral defence of my client, I am driven to state matter which may be considered by many as hostile to the impeachment. For if our dependencies have been secured, and their interests promoted, I am driven, in the defence of my client, to remark, that it is mad and preposterous to bring to the standard of justice and humanity the exercise of a dominion founded upon violence and terror. It may and must be true, that Mr. Hastings has repeatedly offended against the rights and privileges of Asiatic government, if he was the faithful deputy of a power which could not maintain itself for an hour without trampling upon both: he may and must have offended against the laws of God and nature, if he was the faithful viceroy of an empire wrested in blood from the people to whom God and nature had given it: he may and must have preserved that unjust dominion over a timorous and abject nation, by a terrifying, overbearing, insulting superiority, if he was the faithful administrator of your government, which, having no root in consent or affection, no foundation in similarity of interests, nor support from any one principle which cements men together in society, could only be upheld by alternate stratagem and force. The unhappy people of India, feeble and effeminate as they are from the softness of their climate, and subdued and broken as they have been by the knavery and strength of civilization, still occasionally ſtart up in all the vigor and intelligence of insulted nature. To be governed at all, they must be governed with a rod of iron; and our empire in the eaſt would over and over again have been lost to Great Britain, if civil skill and military

tary prowess had not united their efforts to support an authority which heaven never gave, by means which it never can sanction.

" Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself amongst reluctant nations submitting to our authority. I know what they feel, and how such feeling can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks in his hand, as the notes of his unlettered eloquence. " Who is it," said the jealous ruler over the desert, encroached upon by the restless foot of English adventure—' Who is it that causes this river to rise in ' the high mountains, and to empty itself into the ocean? ' Who is it that causes to blow the loud winds of win- ' ter, and that calms them again in the summer? Who ' is it that rears up the shade of these lofty forests, and ' blasts them with the quick lightning at his pleasure? ' The same Being who gave to you a country on the ' other side of the waters, and gave ours to us; and by ' this title we will defend it,' said the warrior, throwing down his tomohawk upon the ground, and raising the war sound of his nation. These are the feelings of subjugated man all round the globe; and depend upon it, nothing but fear will control where it is in vain to look for affection.

" These reflections are the only antidotes to those anathemas of super-human eloquence which have lately shook these walls that surround us; but which it unaccountably

falls to my province, whether I will or no, a little to stem the torrent of; by reminding you that you have a mighty sway in Asia, which cannot be maintained by the finer sympathies of life, or the practice of its charities and affections. What will they do for you when surrounded by two hundred thousand men with artillery, cavalry, and elephants, calling upon you for their dominions which you have robbed them of? Justice may, no doubt, in such a case, forbid the levying of a fine to pay a revolting soldiery: a treaty may stand in the way of increasing a tribute to keep up the very exiſtence of the government; and delicacy for women may forbid all entrance into a zenana for money, whatever may be the necessity for taking it.—All these things must ever be occurring. But under the pressure of such constant difficulties, so dangerous to national honor, it might be better perhaps to think of effectually securing it altogether, by recalling our troops and our merchants, and abandoning our oriental empire. Until this is done, neither religion nor philosophy can be pressed very far into the aid of reformation and punishment. If England, from a lust of ambition and dominion, will insist on maintaining despotic rule over distant and hostile nations: beyond all comparison more numerous and extended than herself, and gives commission to her viceroys to govern them with no other instructions than to preserve them, and to secure permanently their revenues; with what colour of consistency or reason can she place herself in the moral chair, and affect to be shocked at the execution of her own orders; adverting to the exact measure of wickedness and injustice necessary to their execution, and complaining only of the excess as the immorality; considering her authority as a dispensation for breaking the commands of God; and the breach of them as only punishable when contrary to the ordinances of man?

man?—Gentlemen, such a proceeding begets serious reflections. It would perhaps be better for the masters and servants of all such governments to join in supplication, that the Great Author of violated humanity may not confound them together in one common judgment. Gentlemen, I find as I said before, I have not sufficient strength to go on with the remaining part of the book; I hope, however, that, notwithstanding my omissions, you are now completely satisfied; that whatever errors or misconceptions may have misled the writer of these pages, the justification of a person whom he believed to be innocent, and whose accusers had appealed to the public, was the single object of his contemplation. If I have succeeded in that object, every purpose which I had in addressing you has been answered.

"It only now remains to remind you, that another consideration has been strongly pressed upon you, and, no doubt, will be insisted on in reply. You will be told, that the matters which I have been justifying as legal, and even meritorious, have therefore not been made the subject of complaint; and that whatever intrinsic merit parts of the book may be supposed or even admitted to possess, such merit can afford no justification to the selected passages; some of which, even with the context, carry the meaning charged by the information, and which are indecent animadversions on authority.

"Gentlemen, to this I would answer, (still protesting as I do against the application of any one of the innuendos,) that if you are firmly persuaded of the singleness and purity of the author's intentions, you are not bound to subject him to infamy, because, in the zealous career of a just and animated composition, he happens to have tripped with his pen into an intempe-

rate expression in one or two instances of a long work. If this severe duty were binding on your consciences, the liberty of the press would be an empty sound, and no man could venture to write on any subject, however pure his subject, without an attorney at one elbow and a counsel at the other. From minds thus subdued by the terrors of punishment, there could issue no works of genius to expand the empire of human reason; nor any masterly compositions on the general nature of government; by the help of which, the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertion of patriot citizens, has been brought back to its standard. Under such terrors, all the great lights of science and civilization must be extinguished; for men cannot communicate their free thoughts to one another with a lash held over their heads.

"It is the nature of every thing that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we must be contented to take them with their alloys which belong to them or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom, when it advances in its path, subject it to the critic, what you tame it into dulness. Mighty rivers break down their banks in the winter, sweeping away to death the flocks which are fattened on the soil that they fertilize in the summer; the few may be saved by embankments from drowning; but the flock must perish for hunger. Tempests occasionally shake our dwellings, and dissipate our commerce; but they scourge before them the lazy elements, which without them would stagnate

nate into pestilence. In like manner, liberty herself, the last and best gift of God to his creatures, must be taken just as she is; you may pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law; but she will be liberty no longer, and you must be content to die under the lash of this inexorable justice, which you have exchanged for the banner of freedom.

"If it be asked where the line to this indulgence and impunity is to be drawn, the answer is easy: the liberty of the press *on general subjects*, comprehends and implies as much strict observance of positive law as is consistent with perfect purity of intention, and equal and useful society; and what that latitude is, cannot be promulgated in the abstract, but must be judged of in the particular instance, and consequently upon this occasion must be judged of by you, without forming any possible precedent for any other case; and where can the judgment be possibly so safe as with the members of that society which alone can suffer, if the writing is calculated to do mischief to the public.—You must therefore try the book by that criterion, and say whether the publication was premature and offensive; or, in other words, whether the publisher was bound to have suppressed it, until the public ear was anticipated and abused, and every avenue to the human heart or understanding secured and blocked up. I see around me those, by whom, by-and-by, Mr. Hastings will be most ably and eloquently defended*; but I am sorry to remind my friends, that, but for the right of suspending the public judgment concerning him till their season of exertion comes round, the tongues of angels would be insufficient for the task.

* Mr. Law, (now Lord Ellenborough) Mr. Plumer, and Mr. Dallas.

"Gentlemen,

" Gentlemen, I hope I have now performed my duty to my client, I sincerely hope that I have, for, certainly, if ever there was a man pulled the other way by his interests and affections, if ever there was a man who should have trembled at the situation in which I have been placed on this occasion, it is myself, who not only love honor and respect, but whose future hopes and preferments are linked from free choice with those who, from the mistakes of the author, are treated with great severity and injustice. These are strong retardments; but I have been urged on to activity by considerations, which can never be inconsistent with honorable attachments, either in the political or social world, the love of justice and of liberty, and a zeal for the constitution of the country, which is the inheritance of our posterity, of the public, and of the world. These are the motives which have animated me in defence of this person, who was an entire stranger to me; whose shop I never go to, and the author of whose publication, as well as Mr. Hastings who is the object of it, I never spoke to in my life.

" One word more, gentlemen, and I have done. Every human tribunal ought to take care to administer justice, as we look hereafter to have justice administered to ourselves. Upon the principle which the Attorney-General prays sentence upon my client—God have mercy upon us!—instead of standing before him in judgment with the hopes and consolations of christians, we must call upon the mountains to cover us; for which of us can present, for omniscient examination, a pure, unspotted, and faultless course?—But I humbly expect the benevolent author of our being will judge us as I have been pointing out for your example. Holding up the great volume of our lives in his hands, and regarding the general scope of them,

them, if he discovers benevolence, charity, and good-will to man, beating in the heart, where he alone can look;—if he finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed; his all-searching eye will assuredly never pursue us into those little corners of our lives, much less will his justice select them for punishment; without the general context of an existence, by which faults may be sometimes found to have grown out of virtues; and very many of our heaviest offences have been grafted by human imperfection upon the best and kindest of our affections. No, gentlemen, believe me, this is not the course of divine justice, or there is no truth in the gospels of heaven.—If the general tenor of a man's conduct be such as I have represented it, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common path of life, because he knows, that, instead of a stern accuser to expose before the author of his nature those frail passages, which, like the volume of the brightest and best-spent life, his mercy will obscure them from the eye of his purity, and our repentance blot them out for ever. All this would, I admit, be perfectly foreign and irrelevant, if you were sitting here in a case of property between man and man, where a strict rule of law must operate, or there would be an end in that case of civil life and society.

"It would be equally foreign, and still more irrelevant, if applied to those shameful attacks upon private reputation, which are the bane and disgrace of the press; by which, whole families have been rendered unhappy during life, by aspersion cruel, scandalous and unjust. *Let* SUCH LIBELLERS *remember, that no one of my principles of defence can at any time, or upon any occasion, ever apply to shield* THEM *from punishment;* because such conduct is not

not only an infringement of the rights of men as they are defined by strict law, *but is absolutely incompatible with honor, honesty, or mistaken good intention.* On such men let the Attorney-General bring forth all the artillery of his office, and the thanks and the blessings of the whole public will thank him. But this is a totally different case. Whatever private calumny may mark this work, it has not been made the subject of complaint, and we have therefore nothing to do with that, nor any right to consider it. We are trying whether the public could have been considered as offended and endangered, if Mr. Hastings himself, in whose place the author and publisher have a right to put themselves, had, under all the circumstances which have been considered, composed and published the volume under examination. That question cannot in common sense be any thing resembling a *question of* LAW; but is a pure question of FACT, to be decided on the principles which I have humbly recommended. I therefore ask of the court, that the book itself may be now delivered to you. Read it with attention, and as you find it, pronounce your verdict."

After Lord Kenyon had charged the jury in a very precise and eloquent manner, they withdrew for about two hours, when they returned into court with a verdict of NOT GUILTY.

SPEECHES of ARCHIBALD MACDONALD, his Majesty's Attorney-General and the Hon. THOMAS ERSKINE, (now Lord Erskine,) at the Trial of THOMAS PAINE for a Libel, before LORD KENYON and a Special Jury, Guildhall, London, December 18th 1792.

The information, which was opened by Mr. PERCIVAL, set forth, that he, the said THOMAS PAINE, did on the 16th of February, 1791, wickedly, falsely, maliciously, scandalously, and seditiously, publish a certain book, called, "*Second Part of Rights of Man.*" Containing many false, wicked, scandalous, malicious, and seditious assertions.

The case was then opened at large, by Mr. Attorney-General as follows:

"Gentlemen of the Jury,

"Will you permit me to solicit your attention to this cause for no long portion of time in the present stage of this business; for, gentlemen, this case, in my humble judgment, is a plain, a clear, a short, and an indisputable case; were it not, gentlemen, that certain circumstances have rendered it a case of more expectation than ordinary, I do assure you, I should have literally contented myself this day with conducting it myself, as I did in another case that occurred very lately, namely, by simply reading the passages I have selected, and then leaving them for your judgment; but it so happens, that the accumulated mischief, which has arisen from the case before you, and the consequences that have followed from this publication, have rendered it necessary, perhaps, that I should say a few words more in the opening than would otherwise

wise be necessary. In the first place, you will permit me, I hope, without the imputation of speaking of myself, who am a very trifling subject, always disgusting to others, to say, that this prosecution does correspond with my private judgment, for, it has been said, and the rumour has met my ears from every quarter, that I did disapprove of this prosecution; the refutation I shall give to that, is this, that I should think I deserved to be expelled with disgrace from the situation his majesty has honored me with in his service, and thus of my fellow-subject, if I had hesitated to bring this enormous offender, as I consider him, before a jury of his country. Gentlemen, the publication in question was not the first of the kind which this defendant set forth into the world. This publication was preceded by another; that publication although it was such as I was not entirely warranted in overlooking, yet I did overlook it on this principle, that the prosecutor should not be sharp on his prosecution, though he is to be instrumental of preventing any manner of improper publication coming before the public eye. Reprehensible as that book was, it was ushered into the world, under circumstances that led me to believe that it would not confound the judicious reader; and then such a man would refute it as he went along; but when I found that another publication was ushered into the world, that in all shapes was, with an industry inconceivable, circulated, either personally or locally, and was thrust into the hands of parties of all descriptions; that even children's sweetmeats were wrapped up with portions of it, and all the industry, such as I described, to obtrude and force it on that part of the public who cannot correct as they go along; I thought it behoved me, on the earliest possible occasion, to put a charge on record against the author of that book. Now, gentlemen,

gentlemen, permit me to state to you, what it is that I impute to this book, and what it is I intentionally impute to this book, I mean the intention of the writer of the book. Gentlemen, try it by every thing which the human mind can possibly suggest, and see if you are not satisfied, in the long run, that it does deserve that description which my duty obliges me to give it. Gentlemen, in the first place, I impute to it a deliberate intention to vilify and degrade, and thereby to bring into abhorrence and contempt, the whole constitution of the government of this country, not as established, that I will never admit, but as explained and restored at the revolution; that system of government, which we this day look at; and which, if by contemptuous expressions or by declamatory propositions ready made, men may be easily imposed upon, and imposed upon to their own destruction, who might be thought to have experience enough to receive that which is their salvation, and which goes all this way which I impute to this book; a deliberate design to eradicate from the minds of the people of this country, that enthusiastic love which they have for the constitution of this country, which is the greatest human mischief that can be done in society. Gentlemen, farther I impute, that in terms the regal part of the government of this country, founded and limited as it is, is represented as oppressive and abominable tyranny; thirdly, that the whole legislature of this country is directly an usurpation; again, that with respect to the laws of this realm, which hitherto have been our boast; of these, without one single exception, that they are grounded on an usurped authority, and are, therefore, null, or to use his own terms, that there is little or no law in the country; then it is to be held out

in the lower or better informed classes of ten or twelve millions of people, that there is nothing binding in their conduct, except such a portion of religion or morality as they may wish to entertain.

"Gentlemen, are we then a lawless banditti?—Are every man's arms unbound?—Are we reduced again to that savage state of nature?—I ask you that question: you know well the answer. But what will you say to the man who holds this out to those who cannot give the answer you give?—You can answer to this slander on the constitution, this slander on the separate parts of the government, so constituted as ours is; then, that sweeping imputation on the whole system of law that binds it together, namely, that it is a null and void system in the several principal circumstances I select to you; and make this observation, that by selecting those which I observe to be dangerous, I do not do it in order to create a disgust, neither more nor less than this, in stating all the objections that can be to monarchy, to pure and simple aristocracy, never saying a word to those as combined with democracy, which is necessarily connected with democratical tyranny.—Gentlemen, to whom are these poisons that are conveyed in this book addressed?—They are addressed, gentlemen, to the ignorant, to the credulous, to the desperate, and to those persons who are desperate, all government is irksome; nothing can be so palatable to their ears as the comfortable doctrine, that there is no law; they are an easy prey to the crafty, who have the cruelty to deceive.—Gentlemen, in judging of the malignant nature which I from my soul impute to this author, you will be pleased to take into consideration the phrase, the manner, and the matter: the phrase I state to be insidious and artful, the manner of the phrase,

in many instances, deceiving and contemptuous; a short argument, only a flippant one, with the ignorant and credulous. With respect to the matter, in my conscience I call it treason, though technically, according to the laws of the country, it is not; for, gentlemen, if we balance the influence of society to that which is technically treason, in this country we must not extend it; consider the danger between doctrines and insinuations of this sort, and that which may happen from any treason whatever, even compassing the death of the prince on the throne. The law has found a means of escaping the calamity, which, perhaps, on looking back, we might very easily recollect; but even in comparison with this, the chasm is filled up by the constitution of this country; and where is that power upon earth that can fill up the chasm in the constitution that has been growing, not for seven hundred years, but from times eternal, as history tells us? That has been growing from the time past, from that day up to this, until it was consummated by a revolution which shone forth in all its splendor.

"Gentlemen, even to impute to the existence of this constitution, the very evils inseparable from human society or even from human nature itself, all these are imputed to that scandalous and wicked, that usurped constitution, under which we, the subjects of this country, have hitherto conceived ourselves happy to live.—Gentlemen, I conceive it to be no difficult operation of the human mind, to distinguish between the law under which we live, and to draw men's minds from that constitution; it is the operation of good sense, and it is not difficult for a jury of the city of London.—Gentlemen, you will observe whether the whole of this book, so much of it as I am at liberty to trouble you with, is not of this description, that it is by no means calculated to discuss and convince,

but to inflame; not to reason, but to dictate; and, Gentlemen, to dictate in such manner and in such phrase, as in all such circumstances it cannot, in my humble apprehension, leave the most remote doubt in your minds of what was passing in the heart of that man who printed this book in this country.—Gentlemen, permit me now to say a word or two on those passages I have selected to you, first describing what those passages are. I have thought it much more becoming, and beneficial to the public, than any other course I could take, to select six or seven, and no more, not wishing to load the record unnecessarily. The first of them you will find in page 21, where you will find this doctrine:

'All hereditary government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation, than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds!'

"Now, gentlemen, what is the tendency of this passage? All hereditary government is in its nature tyranny: so there is no jurisdiction whatever, nor even the subordination of the country; the regal office being neither more nor less than this, stating it roundly, that in all circumstances whatever, hereditary government must in its nature be tyranny. But is it to be held out to the people of this government, that they are slaves?—Now, gentlemen, this is one of those ready-made propositions that are crammed down the throats of the people of this country; the case is such, that I am found intolerably, and I can bear it no longer.—Then, gentlemen, an heritable crown—our's is an heritable crown, or, under whatever name, that which we are accustomed to look to, namely, the whole body of the country, it is no other

than that men are heritable property; and to inherit a government is to inherit people as flocks and herds. It is to be told, without further ceremony, that they are inherited by a king of this country; and you will judge whether that does not hold out this doctrine. The converse is directly the case; the king of this country inherits an office under the law—he inherits no persons; we are not in a state of villanage; he inherits the office, but as to any other inheritance, none else as you very well know, belongs to him: I shall not stay to prove that one moment. In page 47, speaking of the congress of Philadelphia in 1787, speaking of the regal power, which you know under a different modification, prevails in that country:

'This convention,' he says, 'met at Philadelphia in May 1787, of which General Washington was elected president. He was not at that time connected with any of the state governments, or with congress. He delivered up his commission when the war ended, and since then had lived a private citizen.

'The convention went deeply into all the subjects: and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was the manner of giving it authority and practice.—For this purpose they did not, like a cabal of courtiers, send for a Dutch Stadtholder or a German Elector, but they referred the whole matter to the sense and interest of that country.'

"Now, gentlemen, what is the consequence of that?—Is it historic?—I should have thought that a man, meaning nothing but history, would have been very well contented to recite only history; not in those inflammable and contemptible words, 'For this purpose they did not,

like a cabal of courtiers, send for a Dutch Stadtholder, or a German Elector; but they referred the whole matter to the sense and interest of the country.' Here the revolution and force, and sense of the nation, stare us in the face; it was nothing more than a mere cabal of courtiers. But, to show how totally unnecessary this passage was, except for the deliberate purpose of contempt; I will just read three or four lines, to show how it would operate; the passage, beyond that which is called a cabal, is this:

'They first directed, that the proposed constitution should be published.—Secondly, that each state should elect a convention, expressly for the purpose of taking it into consideration, and of ratifying or rejecting it; and that, as soon as the approbation and ratification of any nine states should be given, those states should proceed to the election of their proportion of members to the new federal government; and that the operation of it should then begin, and the former federal government cease.'

"This is nothing more than a narration of what had passed at the convention: does not this passage stand insulated between the two passages of his story, thrust in for the purposes of mischief; the different wicked passages that are meant to do mischief are spread throughout, and stuck in here and there, and it is pretty frequently necessary to have a recollection of the preceding passages: for the passages very manifestly shew the whole; and if any one will compare the passages together, he will see that mischief come out, more than by one single passage. The next is in page 52; he expresses himself in this manner:

'The history of the Edwards and the Henries, and

up

up to the commencement of the Stuarts, exhibits as many instances of tyranny as could be acted within the limits to which the nation had restricted it. The Stuarts endeavoured to pass those limits, and their fate is well known. In all those instances we see nothing of a constitution, but only of restrictions on assumed power.'

"Then, gentlemen, from the reign of the Edwards and the Henries, it was a regular progression of tyranny; not of liberty, till the Stuarts stepped a little beyond the line, and that begot a necessity for a reversion. But the Edwards—I should have thought he might have spared the great founder of our constitution, Edward the Third; but, instead of that, gentlemen, this author would have the people of this country believe, that up to that time it was a progressive tyranny; and that there was some one material restriction, some assumed power, and that in some degree it retarded the progress of that successive system of tyranny. In short he says,

'After this another William descended from the same stock, and claiming from the same origin, gained possession; and, of the two evils, James and William, the nation preferred what it thought the least, since from circumstances it must take one. The act called the Bill of Rights come here into view. What is it but a bargain, which the parts of government made with each other, to divide profits and privileges? You shall have so much, and I will have the rest; and, with respect to the nation, it is said, for your share, you shall have the right of petitioning. This being the case, the bill of rights is more properly a bill of wrongs and insult. As to what is called the convention parliament—it was a thing that made itself, and then made the authority by which it acted. A few persons got together, and called

themselves by the name, several of them had never been elected, and none of them for the purpose.

'From the time of William, a species of government arose, issuing out of this coalition bill of rights; and more so, since the corruption introduced at the Hanover succession, by the agency of Walpole, that can be described by no other name than a despotic legislation.' This is the description that this gentleman holds out, of that on which rest the property, the lives, the liberties, and the privileges of this country. I wonder to God, gentlemen, that any British man—for such this man certainly was, and still is, to use the words of our own poet—that when he penned those words, or wrote those words, they did not stick in his throat! I will read this bill of rights; I will make no comment upon it, because your own heads and hearts will make that comment.—Gentlemen, you are the posterity that are to be found in this country; are you to take care that those rights should be secured in this country? They are a trust in your hands: you, as a jury, are the guardians of this bill of rights; which, gentlemen, we all know, alludes to the seven bishops, and to the scandalous and gross persecution laid on their persons. And it says, 'All and singular the rights and liberties allowed and claimed in this declaration.' (*See bill of rights.*) Such, gentlemen, is the bill of wrongs and insults, as Mr. Paine calls it; I shall not profane it by saying one word of it.

"Now, gentlemen, I ask you whether what is said by this gentleman be reason or suggestion; or whether it is any thing but description, and that description consisting in abominable and crafty falsehoods. Would it not have been fair in him to have said what it was? But, unsight unseen, this supposition is tendered to the public. Gentlemen,

men, you will please to make a memorandum of page 56, you will find that to be written in the same spirit, and with the same design. This gentleman proceeds in this manner; he tells you, that 'The attention of the government of England,' this is a contemptuous parenthesis; he says, ('for I rather chuse to call it by this name, than the English government)—appears, since its political connection with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purpose.' Then, the government exists for no other purpose than that of raising taxes. I only beg leave to draw your attention, gentlemen, to the dogmatic, cavalier, and contemptuous parenthesis. Farther, he says, domestic concerns are neglected; and, with respect to regular law, there is scarcely such a thing.—Gentlemen, I am addressing myself to gentlemen eminent in the city of London: I think I may appeal to the growing prosperity of this country, from the moment that the night-mare was taken from it, to this moment; and God send it may continue to contemplate this doctrine, as applied to the subject, and I think you may see sufficient cause for disapprobation!—Gentlemen, we shall proceed to page 63; in a dogma we have this:

'With respect to the two [houses,' of which the English parliament is composed, they appear to be effectually influenced into one; and, as a legislature is to have no temper of its own, the minister, whoever he at that time may be, touches it as if with an opium wand, and it sleeps obedience.'—Now gentlemen, here is another dogma, without a single argument; but that there is no government, they are dead asleep, that you may just as well have so many pictures, so many statues; and that it is not new, but from the very nature of things it

must be so: it says, 'Wretched as the state of representation is in England, it is manhood compared with the House of Lords; and, so little is this nick-named house regarded, that the people scarcely inquire at any time what it is doing. It appears also to be most under influence, and the furthest removed from the general interest of the nation.'

"Now, gentlemen, this is spoken in this contemptuous manner of the aristocratical part of this country; it is not for me, gentlemen, at this time of the day, to be lecturing about it:—I really will not repeat the catechism of Englishmen. You are not so ignorant of the history of this country, not to know the very brilliant characters there have been and are in it, which will defend it from such scandalous and contemptuous slanders, and shew whether the government is good or bad. Gentlemen, the next page is 107, there you will find two of the component parts of the legislature disposed of.—We will come now up to the crown itself: 'The crown very truly itself signifies a nominal office of a million sterling a year, the business of which consists in receiving money. Whether person be wise or foolish, sane or insane, a native or a foreigner, matters not. Every ministry acts upon the same idea that Mr. Burke writes; namely, that the people must be hood-winked, and holden in superstitious ignorance by some bugbear or other, and what is called the crown answers this purpose, and therefore it answers all the purposes to be expected from it.—This is more than can be said of the other two branches.'

"Gentlemen, I do not offer one word upon this: but in page 108 you will find,

'This is the hazard to which this office is exposed in all countries; not from any thing that may happen to the man,

man, but from what may happen to the nation—the danger of its coming to its senses.'

"We have been insane for seven or eight hundred years, and, when an insanity has subsisted so long, I trust it will become incurable. In page 116 you have these words:

'I happened to be in England at the celebration of the centenary of the revolution of 1688. The characters of William and Mary have always appeared detestable to me, the one seeking to destroy his uncle, and the other her father, to get possession of power themselves: yet, as the nation was disposed to think something of that event, I felt hurt at seeing it ascribe the whole reputation of it to a man who had undertaken it as a job, and who, besides what he otherwise got, charged 600,000*l.* for the expence of the little fleet that brought him from Holland. George the First acted the same cold-fisted part as William had done, and bought the Duchy of Bremen with the money he got from England, 250,000*l.* over and above his pay as king; and having thus purchased it at the expence of England, added it to his Hanoverian dominions for his own private profit.—In fact, every nation that does not govern itself is governed as a job; England has been the prey of jobs ever since the revolution.'

"Then, gentlemen, this is something different from democracy and hereditacy; he conceives that sort of government not to be the government of a people themselves, but that it is a job, not a government.—Now, gentlemen, such are the passages; I have selected those that bear most on the most offeensive doctrines in the book—that are such as go fundamentally to overturn the government of the country.—In page 161 it is said,

'That

'That fraud, hypocrisy, and impositions of governments, are now beginning to be too well understood to promise them any long career. The farce of monarchy, and aristocracy, in all countries, is following that of chivalry, and Mr. Burke is dressing for the funeral. Let them pass quietly to the tomb of all other follies, and the mourners be comforted.—The time is not very distant when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men, at the expence of a million a year, who understood neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable.'

"Gentlemen, this is said of William the Third, and of the two king Georges, and of the present sovereign on the throne:—If government could be trusted to such hands, it must be some easy and simple thing indeed, and materials fit for all purposes may be found in every town and village.—Gentlemen, you well know the policy and constitution of this country have ever avoided, except when driven by melancholy necessity, to disturb the hereditary succession to the throne, and have thought it more wise to pursue that principle.—I, gentlemen, would ask any man who hears me, in point of history, whether it is not the prominent effect of elective monarchy, that they very seldom are men of consideration, and most frequently of turbulent factions, after having disturbed the country?—Often has it happened, too, that there are foreign and civil wars, they always have chosen very weak persons, in the hope of strengthening their own party; that will be found, I believe, on examination, to be the question with respect to elective sovereignties, and to have prevailed greatly, more than any inconveni-

ence

ence that may have arisen from the natural forms of hereditary rights.—Gentlemen, has he stated with any sort of fairness; has he at all stated or adverted to the many, many resources we are acquainted with?—We know a council of parliament is a council in matters of law, and a privy council; it is the same in point of consideration, and in point of respectability, with those which suit the natural course and infirmity of human nature, when it is considered as an office, and that the officer is not an officer of this country.—Gentlemen, it has just come across my mind; there is unquestionably one illustrious exception in that doctrine, of a man, not the most capable of governing, having been chosen to the seat of an elective monarchy, whom no misfortunes and no disappointments could impair; his mind has arisen with an elastic equivalent to all the pressure I have stated; and he, though not a great prince, perhaps will go down to posterity, not only as a man, but as a great man,—I mean the king of Poland: that illustrious prince had the greater part of his education in this country; there he cultivated the company of every man of science; there he became acquainted with every mode of literature in this country; he became familiarized to the constitution of the country; there he became inflamed with the bill of wrongs and insults. From that education, it is that I really believe him to have become the just and wise prince that he has proved himself to be. Gentlemen, I will now, for want of better expression, for I pretend not to any oratory, I pretend to feeling, and to have formed my expression on this subject according to truth; if I can utter them in plain words, it will be the utmost I can do; but I will borrow from a writer who, I think, is fittest to give an answer to the defendant, Thomas Paine: that man, as I have reason to believe, does not put his name to it; he is

not

not the chief magistrate, but the second in the executive government of a country. Gentlemen, before I bring his words, this is my opinion of the work, and which I humbly offer to your consideration and adoption; he says his 'intention appears evidently to be, to convince the people of Great Britain, that they have neither liberty nor constitution; and there is no possible means to produce these effects to themselves so easy, as that where persons governed, follow implicitly the conduct of the French.'—The next passage is this,—'Mr. Paine cuts the Gordian knot, and at once compares parliament, &c. *to the words, the champion of the revolution,* (*I take this to be Adam's answer,*) I shall therefore now proceed to examine the reasons,' and so it goes on.

"Now, gentlemen, with your permission, I shall adopt his words; 'When Mr. Paine invited the people of England, &c. *to the words, with which he must be hereditary,*'—So much for the passages and the interpretation, which I submit, gentlemen, humbly to your consideration. The next matter, gentlemen, on which I shall proceed, is the evidence which I propose to address you to; and that evidence will go to shew, not only the fact of this man's being the writer of the book, by his own repeated admission, and by letters under his hand; but to shew what his intention was. I shall also produce to you a letter which this gentleman was pleased to address to myself, in which letter he avows himself in so many words the author. I shall prove his hand-writing; I shall prove the intention with which this book was written, namely, to vilify this constitution, and injure the nation. I have another letter addressed to a person of the name of Jordan, the publisher of this book."

Here the Attorney-General produced a letter addressed by Mr. Paine to Mr. Jordan, with another which was inclosed

closed in it. In the latter he avowed himself the author of the book. The Attorney-General also produced another letter, written in very intemperate language. This letter was dated, Paris, 11th November, and addressed by Mr. Paine to the Attorney-General himself, requesting him, if the prosecution went on against him, to read the letter in the court; which having done, he then proceeded:

'Gentlemen, I have complied with this request, I am practising it, and if I succeed he shall never return to this country, for I will outlaw him.' He then goes on: 'But I shall offer reasons for writing this letter, &c.' In this situation, gentlemen, I will only say this, that I think Mr. PAINE does not judge very well of mankind. I do not think that this is a fair conclusion in Mr. PAINE, that men who are quiet, in obedience to the laws of the country, decently, and I hope with a moderate share of reputation, I do not think that a considerate man of that sort is just a very likely man to be thrown off the hinges; but, if any of these assassins are here, or in London, and there is really some doubt with some people on that subject; I, for one, think, gentlemen, that a man's dying in discharge of his duty is just as good a way of dying, as dying of a raging fever, or in a fit of the gout or stone. He says, 'the government of England is a great if not the greatest production of fraud and corruption that ever took place in any government,' and that 'he who does not observe it is blind.' Upon my word, gentlemen, I am stone-blind then. 'But though you may not chuse to see it, &c.' Now, gentlemen, this is contemptuous, scandalous, false, prostitute, profligate. Why, gentlemen, is Mr. PAINE, in addition to the political doctrines that he is teaching us in this country, is he to teach us impeccability—is he to teach us human creatures, whose momentary existence

depends on a Being merciful, long-suffering, and of great goodness, that those errors, from which even royalty is not excepted, are to be detailed at great length, and are all to be mentioned in language shocking for British ears to hear, and I am sure disgusting to their hearts? No man that is not a barbarian and a beast, would wish to destroy that great security of all human laws and constitutions, the Christian religion. Gentlemen, there is not, perhaps, in the world, a better rule to judge by in domestic matters. A family is a small kingdom; a kingdom is a large family. Judge for yourselves, gentlemen, of the good heart of this man, who thrusts into my hands, who am, if not an useful at least a grateful servant of a kind master, the slander of that master, and the slander of his children; what will be your verdict with respect to his heart? He says, 'I observe to you as one man ought to speak to another;' does he speak of him and his family as one man should to another? and I should have forgot my duty to that master, if I forgot to prosecute him as a violator of the law of the land. He says, 'I know, also I speak, what people feel, that you cannot obtain a verdict; and, if you do, it will signify nothing, without packing a jury—and we both know that such facts are practised.' Gentlemen, he says, 'I have gone into coffee-houses and ale-houses, where I was unknown, and where there is a currency of opinion, and I never yet saw any company of twelve men that condemned the book, but a greater number than twelve approving it. Now, gentlemen, whether the sense of the nation is to be taken from the opinions of pot-houses and ale-houses, you are to judge. Gentlemen, I will give you a thousand guesses to judge of his motive; but he says, it is from benevolence: he further says, I desire you will read this letter in court.' Gentlemen, I have done so; 'after which the judge and the jury may

do

do as they please.' He says I would have published the information, with remarks upon it: but I now will wait till the trial is over, and then I will make some observations.—'I hope in God, gentlemen, he will not omit one single word that I have said this day. At present I do not think I need trouble you any farther. I can have but one opinion, which is, that the mischievous tendency of this book is that which I have taken the liberty to enlarge upon, and that such will be your verdict. However I have done my duty, in bringing before you an offender of this sort. Be the event what it may, I am satisfied in having placed the public under the shield of your protection."

The court then proceeded to the examination of witnesses, which being closed;

Mr. ERSKINE (now Lord ERSKINE) delivered the following speech in defence of Mr. PAINE.

"Gentlemen of the Jury,

"The attorney-general in that part of his address to you which arose from the communication of the letter written to him from France, did not appear at all to play the actor; when he exhibited, most undoubtedly, signs of great sensibility and emotion, he spoke, I am persuaded, as his feelings dictated. With respect to his situation in receiving that letter, and feeling it as his duty to present it before you, gentlemen, if his embarrassment were that which he expressed, and that which he felt, what do you think mine must be?—And, gentlemen, as I am persuaded my learned friend, for we have known one another from our childhood, does not consider me as bereft of those feelings which belong to the human mind when it is well cultivated, though I do not possess them, I am persuaded, in the degree he has the means to feel them; yet, I trust my friend is not unsusceptible of such sensations. He speaks, as he can only speak, as a subject of a sove-

reign, whose high situation removes him too far from his subjects to have any other affections than those that grow from his great situation in society. You will remember, gentlemen, that I stand in the same situation towards another great personage, who is implicated in that which I am ready to admit to you is a gross and scandalous libel, and that that is the most improper part of the letter which has been read, though I stand in a different relation. Besides the duty I owe to that prince to whom I am a servant, I owe to him and feel for him that affection which he demands as a man: but that shall not detach me from the duty which I conceive belongs to my present situation. I stand here, gentlemen, to do that, which if were not done by me, the author of this book, if in your eyes he is criminal for detracting as he has done from the English constitution, he would have ample ground for that detraction, for an impartial trial is one of the fruits we all hope is derived from that constitution under which we live, and from which we derive so many benefits. It would appear, I am persuaded, a blur and a blot upon that constitution, if a man, standing upon his trial, could say he could not be defended.

"I confess, gentlemen, I should have been glad if I had had an earlier opportunity of knowing correctly the contents of that letter. I should have been very glad if I could have had a more early opportunity also of knowing, which I do not admit at present, that it was genuine and authentic; because I know not only the impression which such a letter must make upon gentlemen's minds who are the jury to try the cause, but, as far as nature is able to struggle against any difficulties thrown in, and with my duty to my client, I will exert it in the best manner I am able. I confess I cannot help thinking it would be a great advantage to the public, if the Attorney-General is right in his comments upon the book, that by the law of England the book

book cannot exist, or be circulated, from the matter contained in it, I cannot help thinking, he thought it for the interest of his country, and the merits of his prosecution, to read the letter: that letter contained what is wholly foreign to the prosecution before you, and my lord could not receive it upon any other principle than this, that it admitted the defendant was the author of it, and to prove *quo animo*, that book was written by him. Gentlemen, no one fact whatever has been proved by the Attorney-General as coming from the defendant; or are they capable of fastening upon him one act previous to the work before you. No one expression that he meant to produce civil war and discord in England; nothing reproachful either to the character or conduct of the sovereign, or any of the family. And that letter is written months and months after this book, which is the book of his brain, and after he had been, in a manner, driven and expelled his country to a new society, where new ideas may have started up in his mind long subsequent to his work, and which, therefore, do not furnish any fair commentary on the work itself. My friend has stated to you, that rumor has spread it abroad, that this prosecution is carried on by him as a public officer of the crown, without any private approbation of his own; and he thinks it necessary, and I think it right to think, if he does so think, it has his concurrence, and he should hold himself disgraced in this profession, of which he is so honorable a member, and in society, if he had not brought this matter before you. Here he and I stand in a little different situation; he tells you rumor has spread it abroad; I am persuaded it has so as to come to his ears. You will attend to truth or falsehood, and I might call upon all around me, except the few that are about the Attorney-General, and who are within the immediate intelligence which he can convey, and ask whether that

rumor has spread itself abroad to any large or extended circle? With respect to myself, do I stand in that situation before you? Can you go to any of the places where men resort for pleasure or business, without seeing my name attacked, and character wounded and torn to pieces, for only doing that which, till I die, or while I continue in this pofession, I shall always continue to do? That is, without making myself a party in this cause, without undertaking the defence of this or any other man, I will assert the freedom and integrity of the English bar, with which the most valuable part of the English constitution is loft; for, from the moment any English advocate can state, he will, or not stand between the crown and the subject that is put upon his trial, from that moment the liberty of the subject is gone. If a man, high in the profession, presumes to give judgment against the defendant, he assumes the character of judicature; and if he, as a man of some reputation (and my situation entitles me to suppose I have some) refuse to do it, how is any man to be defended?

"But, gentlemen, I have no complaint to make, either against those printers who have circulated opinions, or the authors of them. I take it a great many of them may be deluded, so as to think they render a service to the public. If there be any description of men, who from malice and injustice, or from personal disregard to me, have mixed in it, I forgive them: but I stand here, in my situation at the bar, to defend this book, and the author, in the manner I conceive by the laws of England they may be defended. Gentlemen, I could not help mentioning this, but I should rather, I believe, poftpone it for farther consideration. It is now my duty to state to you what the question in this cause is; for if it were the question which rumor has invented and perverted; if it were the

question that those who have so thought and spoken of me had conceived, it would be a very speedy determination: the question is not, whether the constitution of our fathers, under which we live, and under which I now present myself before you, be or be not preferable to the constitution of America or the constitution of France, or any other human constitution? In the nature of things that cannot be the question. Gentlemen, I will put this matter in a light in which it appears to me, not merely the strongest for the defendant, but the strongest for us all; for, though I abhor the calumny in the concluding part of that letter which has been read, there are truths in it which imports us all to consider; and, I am convinced, every man in a court of judicature ought to divest himself of all prejudices, and meet fairly the case of the parties that are submitted to their consideration.

"Gentlemen, it has been asserted loudly and variously, and parliament has been assembled together out of the ordinary mode, upon the presumption that these things were of mischievous tendency. I should suppose I am now addressing some gentlemen infected with the doctrine of this book, and have no love for the constitution of the country, and believe the country would be happier under the form of a republic. I have no difficulty in asserting that, if there were any of that opinion, and I believe I am not addressing myself to such, but if I were addressing myself to any one who had such ideas, I should say, you cannot upon that ground find a verdict for the defendant. You are bound to convict him, provided, in your judgment, he has transgressed those limits the wisdom and policy of the law of England (and it was that principle that made the constitution) have allowed, not merely for the preservation of the law of England, but for the liberty and freedom of the press; therefore, it is impossible that you should have

any other species of jurisdiction: you have no authority but by the law of England; you have no right to give a verdict, and his lordship had no right to pass sentence against the defendant, but for that jurisdiction which the same law confers upon him; and therefore the question is not whether that law under which we live is superior or inferior to any other law, but whether it is upon those principles upon which the constitution gave us that law, and that which is continued, and which the constitution does support; and whether it does or does not give any man liberty to write as the defendant in that book has written.

"Gentlemen, it may appear, in the outline of a cause like this, to be a large concession; but my learned friend would say, it is rather an artful declaration of counsel; but it is neither, for it is truth: but if true, and I can not suppose government had not some foundation for assertions so general, if I were addressing myself to men who had read this book, who thought they were doing God honor, and human nature justice, by hastening a revolution; I should think myself wrong, if, as an advocate in an English court, and I should think I disgrace my profession if I said, upon those principles, yet could not give judgment for the defendant. The law binds every man's conduct, and, therefore, it binds your conduct and mine, but it leaves opinion free and open; the consequence follows therefore absolutely, and without any possibility of drawing a distinction: but if, on the other hand, you shall disapprove of the matter contained in the book, and feel that your own government, which he detracts from in several circumstances, is far more valuable and firm in its original construction than that which he represents, and is not subject to encroachments or abuses which he states, and that the propagation of the doctrines

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of it may tend to alienate the opinions and affections of some of the people, the subjects of the country from the government of the country, still you cannot, upon that footing, convict him, without going beyond those limits; unless he has overstepped that authority which the law of England has constituted as the scope and bound of the freedom of the press.

" Gentlemen, I admit with the Attorney-General, for it is in vain to deny it, that in every matter where you are to investigate the mind of the man that has written, you must look also to the mind of the man who wrote it, you must see whether it is written *bonâ fide*, as lawyers express it, but that like every other question of justice, must depend upon the evidence before a court of justice, and on the opinion of the court on that evidence; and therefore, whenever a man is to be judged by any thing but the work itself, and the construction that work affords, if it is neceſſary to connect it with any other extrinsic matter, that extrinsic matter must be put on a part of the record: as, for instance—if Mr. Attorney-General should say, I do not mean to say, that these things were written at another time, I do not mean to say, if they were circulated in a different manner, or connected with different circumstances, which I say was the case of the book, it would be productive of bad consequences; but that it was owing to the situation of France at this present moment; it is owing to the situation of that people, who have introduced and erected a republic which Mr. PAINE wishes to introduce into this country, for which purpose he writes a book, which at this moment is before you, and which I am to put a construction upon; and to submit those circumstances to your consideration. I humbly contend before his lordſhip, that the law requires, for the safety of mankind, that any charge which a subject of that country is called upon to answer, ſhall be put literally on the record, that he may know what crime it is

that he comes to answer.—The defendant here comes to answer having written this book; it does not state any extrinsic circumstances which render the writing of this book criminal in one instance, though it might be criminal in another, it does not state any times or seasons of publication, but it is setting down to pen these sentences, and sending them to the world, that constitutes this offence, and consequently the grammatical construction of the book in bits and scraps. The Attorney-General, out of a book of 178 pages, has plucked only four and a half; but whether those sentences be or not beyond the liberty of the press, which the law of England has given for the most wise and useful purposes of society: it is not whether you approve the book, not whether you condemn part of the passages of it; not whether you are of the same opinion with the author; but whether the man, at the time he wrote it, felt as he wrote, and whether he described himself as he felt.

"If my learned friend could make out to you this proposition, I admit he will stand in a very different situation before the court. Mr. PAINE admired the construction of the English government, persuaded of its virtues, conscious of the benefits derived from it to all the subjects under it; wishing to describe the happiness which is enjoyed under the constitution, with that belief he sits down to write those pages. He could not be defended or protected for what he wrote, if he himself is deceived, and believes that which other men might materially differ from him in. If he thinks what you and I do not think, and, under that impression, and the genuine apprehension of his understanding, he sets down to write this book, he is not guilty of any offence against the law of England, although what he writes may be inconsistent with the principles of government. I take it to be a great part of the freedom of the English government, that every man,

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as I stated before, should be protected in the course of his trial; and I believe also, if the advocate entertains principles hostile to the man he defends, he is not only justified, but called upon to conceal those sentiments from the court: if this sentiment happen to be different from the man he is defending he is equally bound to declare them. I know very well that every thing would come with very little weight from any quarter that could be suspected upon their head, therefore I give the defendant the benefit of contending he is not guilty; and I give him the benefit of knowing, that which it is not necessary you should know, that I profess myself to be a man who love and admire the genuine principles of the English constitution, that you may know what comes from me comes from no suspected quarter: I give the defendant the liberty of the press in saying his opinion differs from mine; though you think, as I take it for granted you do, that mine and yours are better than his, and that the form of our government is far better than that which he approves and wishes to inculcate: there is an end of the freedom of England, and of that constitution we all profess to love, if every man possessed of an opinion, may not freely write those sentiments, which he does not take up upon the spur of a particular question, but merely to express the sentiments of his mind.

" Gentlemen, the principle I mean to lay down as to the liberty of the English press is this; that every man may address himself, not to individuals to excite them to disobedience to the laws, but that every man may address himself to the individuals of a whole nation, and may in that address canvass the propriety and advantage of a form of government in general, and the government in a particular country which he inhabits; that he may find fault with the constitution, that he may take it to pieces, that

he may point out its errors and defects, and state what are its corruptions, and what are likely to be the consequences, and where the public, from falling into those corruptions, are long suffered to remain: and in doing all that, he is not a subject of criminal justice, unless it can be shewn, that at the time he so wrote, and at the time he so published, he did it, not contemplating the happiness, but seeking the misery, of the human race, that he did it at a time, seeking to bring about consultations in a country by exciting individuals, and informing them they had a right to act and think for themselves, and that any individual might, in his discretion, oppose the general law of the state; I have no difficulty in saying, that if it shall be found, upon an attentive perusal of the works of the defendant, he inculcates those doctrines, nay, if the direct contrary shall be found, or if it shall appear that he says to any one man what we might suppose to have been said by him, and what was said by an unfortunate criminal, who stood here insulting the court for a length of time yesterday; who, instead of saying I am a prisoner, I put these premises to be sold, because the French will speedily come and release us, and I did it to excite others to release me from my imprisonment; if there could be one syllable that could have put the man's defence in the present defendant's mouth, in the force of a patient judge, I must say, upon that occasion, he should be holden up to the justice of his country. Gentlemen, I say, and I say it in the name of THOMAS PAINE, the defendant, the author of the Rights of Man, and in his words, which I shall read to you.—'The end of all political associations is the preservation of the rights of man, which rights are liberty, property, and security; that the nation is the source of all sovereignty derived from it; the right of property being secure and inviolable, no

one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity.'

"Gentlemen, those are undoubtedly the rights of man. The rights of man it is the end of all governments to establish; and I say no man, after any government is legally constituted, can without rebellion withdraw his allegiance from that government which he has lived under and paid obedience to, that all attempts against it are unwise and unjust, as well as criminal; for the best reasons are policy, justice, and nothing short of the will of a whole people can change any form or species of government. Any man, therefore, who is told by an author he has a right to act and think for himself, that he is no longer to wait, that he is no longer to see whether the operation of that conviction shall be equal to the common sense of mankind, but the moment he has brought himself to a conclusion that any part is defective, he is not to see whether it will be meliorated by common consent, but that, from that moment his own judgment and understanding shall free him from the opinion that the law is wise and the constitution is just, he may pull it down, and refuse all the obedience to the law and the government; unless I can convince you that the defendant has taken pains to inculcate a direct contrary doctrine, a doctrine that is directly contrary to the peace and order of the country, however his own conscience may acquit him, he cannot be acquitted at the tribunal of an English jury. Does any man suppose a person can write a book to another, and say, the instant I convince you the government of England is defective, you are to go about to destroy it. But, on the other hand, had it not been that persons had a right (and thanks be to our constitution for permitting it) to explain those alienable rights which nature

nature has given us, and that spirit which God has given us, how should we have that constitution we so justly boast of? No man could have gone before and pointed out the abuses of the form of government under which he lived: or how could the government have passed on from state to state so as to have risen to such a pitch of perfection, to such a state of maturation, that the Attorney-General considers it as profanation to touch it? Gentlemen, you understand the principle upon which I mean to defend my client; and I will not advance one step farther till I put him better than it is possible he can stand at present, either from what you have heard from abroad, or what you have heard in court, or from the means most unquestionably taken to cry down this book and the author, who stands in a situation different from any other man who presented himself in an English court of justice. If I were to ask you, gentlemen of the jury, what it is that is the first fruit of liberty, not that they describe it, but what they would wish it, the English tree of liberty; if I may emphatically express what is the fruit of that tree? It is the security of the rights under the law, not only the rights of property, but the rights of liberty and reputation. How are we to have those rights, but by the administration of justice? Consequently, there is not a man in England ever brought upon his trial, and where it can be at all conceived that, upon the circumstance he represents himself before the court and jury, there can be any prejudices in those who hear the cause. So anxiously does the constitution guard against those evils, that, if the smallest circulation of any paper that leads to the perversion of justice, or if from the best motives a person shall do the least thing that can at all affect the justice of the tribunal, from that moment the trial is postponed. If his lordship will give me leave to remind him,

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upon the trial of the dean of St. Asaph, or rather when he was brought to trial, there was a circulation of books read, not books relative to the object of trial, not books that affected to take notice even that he was coming to any trial, but extracts from ancient authors of great reputation, pointing out the rights of jurors, and shewing that jurors had a right to consult the innocence or guilt of the party. The noble lord put off the trial of the cause, not from any particular opinion that those writings were false, but because it was out of even course of trial.

"Gentlemen, in what situation do I stand before you? This unfortunate defendant and his book have been prejudged in a thousand shapes; but what is more extraordinary, pending the very trial, and when the cause was standing upon the paper. Gentlemen who, I take it for granted, mean well to the country (though I have no doubt other persons act upon the same principle); but gentlemen, who seem to know so little of the consequences, published throughout the world a protest against this very work of Mr. PAINE; gentlemen who seem so fond of holding up that constitution; it is thrown down your areas, it is circulated throughout—it meets you at a turnpike, it is thrown into your chaise. An answer to this very book, which is now to receive a judgment; nay, that very tribunal, much higher than that in which we now sit, and in which I have the honor to be a member, and my learned friends know the truth of what I say, that, from what has passed in that house, and gone on in every channel of circulation, this cause is prejudged. I do not make this observation relating to his lordship: for there has not been a motion before to postpone the trial. I know perfectly well, if any such motion had been made, the effect of it would have been what justice and law required.

quired. No man can respect more the justice that I am sure I should have received than myself. What is the consequence of all this? You are to guard your minds against every thing, except that which meets you here. You ought to come prepared to look at this work, to give it its genuine construction, and to collect the evidence in the cause. With respect to the letter, I shall say a word at the conclusion of my address. You will at present put it wholly out of your mind, as being written long subsequent to the book; then the cause will stand thus: the defendant wrote the book, and sends word he is desirous to be given up as the author of it, if any criminal inquiry takes place. There is not any evidence whatever of an indiscreet declaration; no taunting expression previous to the publication; not any thing that might not come out of the mouth of a man meaning no harm. It is not a libel upon the king charged upon the record. I never heard that such a letter had been brought about—I know nothing but from the record—I had seen something which professed to be the copy of a letter.—I said it was a foul forgery to embarrass the cause; and it comes at a time that it produces embarrassment in my mind, and tends to prejudice my case.

"You must look, my learned friend says, at the nature of the book, and the consequences it has produced; not only has it been published among the judicious part of the community, which was the case with the first part of the Rights of Man, which the Attorney-General did not prosecute for a year and a half; he did not prosecute that book, because he thought it would only extend among the judicious. Every one must see whether the manner of the man is not as visible in the one as the other; it would have been an antidote to the poison, and little might be hoped or feared from the circulation of it.

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But, with respect to this work, its situation had been different, and had gone down among all people, was printed on whited-brown paper, was thrust into the hands of children to wrap up their sweet-meats, and was circulated in every corner. I should humbly submit to his lordship, the mode of circulation of this book is not proved, nor is there any evidence against the defendant. It is said that Mr. PAINE desires the book might be so circulated. If he had, there would have been an end; but did he or not, at the time he was writing it, believe he was writing that which was beneficial to the English nation at large, and not meaning to deprive them of the advantages they had, or contemplating their misery? I am not examining what this man wished; I am not investigating that; but you must look to the situation of the man for his education, from his habits, and the whole history of his life, whether there is not one uniform cast of thinking, to shew this book was not written upon the spur of the occasion, but from the result of his mind, his sentiments, and a long course of thinking for years. I cannot help being surprised that Mr. Attorney-General, in the whole of his address, took no notice how this work first came to be published in England; he desires you to take for granted Mr. PAINE volunteered the first part of the Rights of Man, and, if written in answer to nobody, it was a thing done for a malicious purpose, and that he had nothing at all to provoke that inquiry; that it was followed by the second part; that he was the first man that set about this attack. In order to shew you how that matter is, I will read to you what my learned friend says; for the book must be all in evidence together; when my learned friend reads to you a passage concerning hereditary tyranny, or concerning the Hanoverian

verian succession, what is the foundation of the observation, that every man must be judged most unquestionably from what he writes, that the mind is supposed to go with the hand; it follows equally, if you read any part of my book: it is common sense, and the common administration of justice shews you, if you read any thing or any letter to make against me, you must read the whole together, and judge of the object by all that he has written—that I see I have the assent of his lordship to—and you must take it out of court; you are to look at the whole book, and compare those parts with the context and the conclusion; and, above all, attend to that which I am now about to read. He here states, in page 11 of the preface, before he begins the discussion, and consequently every man who reads the book has a warning before he begins, what is the intention of the author. Read this introduction and preface, they have no other meaning than as a key or index to the intention of the author; and it is as much as to say, any man that reads my work, although I furnish him with a clue to my sentiments and principles, and although I give him a preface, he leaves that out, and fastens a meaning and construction different from what the preface itself would explain. He says, 'I have differed from some professional gentlemen,' meaning gentlemen of our profession, 'on the subject of prosecutions, and I since find they are falling into my opinion, which I will here state as fully, but as concisely, as I can.'

"I will first put a case with respect to any law, and then compare it with a government, or with what in England is, or has been, called a constitution. It would be an act of despotism, or what in England is called arbitrary power, to make a law to prohibit investigating the principles,

principles, good or bad, on which such a law, or any other, is founded. He will put it upon the very footing the greatest writers upon the English government have put it. He goes on,—' If a law be bad, it is one thing to oppose the practice of it, but it is quite a different thing to expose its errors, to reason on its defects, and to shew cause why it should be repealed, or why another ought to be substituted in its place. I have always held it an opinion, (making it also my practice) and there is no evidence that he has not made it a practice, (for he has never been called before a court) ' it is better to obey a bad law, making use at the same time of every argument to shew its errors and procure its repeal, than forcibly to violate it, because the precedent of breaking a bad law might weaken the force, and lead to a discretionary violation of those which are good: the case is the same with respect to principles and forms of government, or to what are called constitutions, and the parts of which they are composed. It is for the good of nations, and not for the emolument or aggrandizement of particular individuals, that government ought to be established, and that mankind are at the expence of supporting it. The defects of every government and constitution, both as to principle and form, must, on a parity of reasoning, be as open to discussion as the defects of a law, and it is a duty which every man owes to society, to point them out. When those defects, and the means of remedying them, are generally seen by a nation, that nation will reform its government or its constitution in the one case, as the government repealed or reformed the law in the other.'

" Gentlemen, you must undoubtedly wish to deal with every man that comes before you in judgment as you desire to be dealt with yourselves, if you should accidently publish any thing that might not be thought proper,

proper, and any man brings you to trial for it. And, I hope, it will not be laid down as law to-day, if you or I should publish any opinion concerning the government of this country, that some amendment was necessary, and should point out the foundation upon which those amendments were to be made, and were to explain the errors, that I am to be convicted or acquitted, just as twelve men shall think. If I am not perfectly right in my argument, there is an end of all freedom, that has made the constitution what it is, and, by-and-by, I trust, will make it better in form, and purify it from those abuses, which, if they had not existed, we should not have been here to-day on the trial of this cause. He says, I obey the law until it is repealed; I make it a duty to obey the law. If a man choose to disobey a law that was bad, the same would apply to any other man that would not obey a law that was good; and he states the advantages to society in the different ages of the world. He goes on and states them in page 162, second part; the former pages in the preface were 11 and 12. The reason I am occupying a little portion of your time upon this subject, is with this view: I wish you to follow me throughout, upon the principles I put the cause upon, that, if you find any thing in this book, which invests any individual, or any number of individuals, or any thing but the whole nation itself, with the power of changing any part of the law or constitution, I give up the cause, I must give up the cause, because I will not affront the majesty of the court with stating propositions which must be false. If a man does not like the country, let him retire to another. If a man is resolved not to obey, let him go. A man is not only called upon, but it is a duty cast upon him by God and his country, to enlighten his country, and do a service to his country; and

and I never yet heard it said, not without contradiction not only as an illegal, but highly beneficial to the community, to write with his mind and heart, and not what his malice suggest; not what, in the contemplation of the misery of others, he thinks proper to put upon paper, but what his own conscience dictates, whether it be the truth, or beneficial or not, it is the law of England, and no other law, that gives this right to the subjects of this country.

" He goes on—' When a nation changes its opinion and habits of thinking, it is no longer to be governed as before; but it would not only be wrong, but bad policy, to attempt by force what ought to be accomplished by reason. Rebellion consists in forcibly opposing the general will of a nation, whether by a party or by a government. There ought, therefore, to be in every nation a method of occasionally ascertaining the state of public opinion with respect to government. There is, therefore, no power but the voluntary will of the people that has a right to act in any matter respecting a general reform: and, by the same right that two persons can confer on such a subject, a thousand may. The object, in all such preliminary proceedings, is to find out what the general sense of a nation is, and to be governed by it. If it prefer a bad or defective government to a reform, or choose to pay ten times more taxes than there is occasion for, it has a right to do so.'

" Gentlemen, these are the sentiments of the author of this work—sentiments which I will take upon me to say have the highest authority for their foundation—sentiments which I think are the best title, and the securest title, that his majesty and his family have for the throne of these kingdoms; and so far am I from thinking his majesty has any other advantage or footing, that I thought

it the highest act of attachment and fidelity I could shew for a person I regard, and shall ever have the same affection for I have now. And I know the Attorney-General can only say he hopes, and I can only speak of that part of the letter which speaks of the profligacy of the royal children, which has been so much held out for a great length of time; that slanderous profligacy that ought to have been checked through the presses of this country. The Prince of Wales may be traduced and calumniated in every part of the kingdom, and they will never come in question till they are brought in to load a defence with matter collateral to the charge; therefore, I say, that which the Attorney-General can only hope, but which I believe and know, that whenever that prince comes upon the throne of this country, (where I hope he will not but by the course of nature) he will make the constitution of this kingdom the foundation of his conduct; when I say that, I am not in the smallest degree removed from contending the defendant is not guilty; and I say, when he expresses such sentiments in this book, he expresses what is the interest of that illustrious family to cherish, and I spoke it in the presence of one of the illustrious persons, as I have since been informed. I put the title of the King's Majesty, as I conceive it stands upon the genuine principles of the revolution, that is, upon the majesty of the people at elections, not as you elect the king of Poland, but as you elect a family in hereditary right, which in the sense which Mr. Attorney-General would give, that has no proof in this country; therefore, it is fit you should know how the defendant came to write this book. God be thanked, the Attorney-General knows my respect and value for him, and knows my sense of the honorable

manner

manner in which he has conducted himself from the beginning to the end of this business, and that I would not throw the least reflection upon him; but he will give me leave to state, and I wish it had not been left to me to state, how that first principle came to be the work of Mr. PAINE. Concerning hereditary right I will tell you, and it will give you a clue to the mind of the author. Taking it for granted, you and I go together in thinking Mr. PAINE deceived in his opinion of the English constitution, and that we agree, that king, lords, and commons, is superior to every thing the wit or wisdom of man ever put together, but the question will be, whether he ever thought otherwise, and whether he thought it badly governed under these circumstances, then the book will appear different totally from that light it is represented to you.

"Gentlemen, we all of us remember the calamitous situation in which this country stood a few years ago; a situation no good man can help looking back to without horror; a situation in which no man could feel himself safe from its not happening again while the causes I am now about to state still remain; I speak of the American war. This book, let it be known, for it appears upon the face of it, is written as an answer to Mr. Burke; it is written as an answer to him, not only the second part, but the first, written under the circumstances I shall by-and-by explain; and, in the course of that explanation, I shall be obliged, perhaps, to cite one or two passages from the works of that celebrated person; and I shall speak of him with high respect; for, it is impossible for Mr. Burke ever to make me forget him, whatever he shall be pleased to think of me, or my friends, who think as I do. With whatever contempt he may look down on my humble talents, when compared to his, he shall never

oblige me to forget the benefit the people of this country owe to him for the writings which he has left upon record, and for which thanks are due, next to the thanks which we ought to have to God, most humbly, for putting into our minds those principles which are the safest and purest for our government; undoubtedly, that celebrated person does not seem to think now as he did formerly, and, although the constitution, as Mr. Attorney-General told you, has remained from all eternity to the present time, without any material change, except a melioration of it; most undoubtedly that gentleman thinks very differently of it at present from what he did formerly; and if he had been as consistent, and his opinion had been as uniform, as Mr. PAINE's, we should not have had this trial. Mr. PAINE may be right, Mr. Burke cannot. Mr. PAINE has not contradicted himself, Mr. Burke has. He may be wrong in part, or right in part; but, if he is deceived throughout, it does not remove me from my ground of defence.—That great and alarming conflict, the American war, made Mr. PAINE a republican, which he confesses himself to be, and which I admit him to be; he means to declare it as his opinion, to be a constitution defective in its form, and attended with abuses, one day or another in his judgment, will bring ruin on us all. I dont mince the matter of the defendant, I put it whether you shall be of opinion he thought when he wrote; or whether he has written a matter that does contain any slander upon the magistracy of the king's person, or upon those who execute the laws, and whether it is that which falls within the denomination of a libel. As to that letter, if the Attorney-General was to indict him tomorrow, he could have no defence against it; having spoken of the king, and wrote of him, as wanting proper qualification, and representing the profligacy of the royal

royal family, and that it was likely to produce evils; could he defend himself against that?—Good God, gentlemen, is it possible! The question will be, for you, whether this book, if you shall not find it infected by that letter (which is written nine months since), falls within the same principles?—Gentlemen, I stated to you the constitution of this country, as established by kings, lords, and commons, is the constitution which I like, is the constitution which I should be sorry to give way to any other, is the constitution which has been productive of various benefits, and is the constitution which I trust will be productive of many more, provided it does not carry the seeds of decay, or unless we have not wisdom to prop it up. I agree with the merchants that assembled in the city of London, and should have been happy to have signed my name, and should have subscribed to it, had I a proof that the English government is capable of reforming all the abuses that belong to it, the abuses that are here stated, which is a clue to the mind. I am defending a man whom I am not able to describe, and that I am afraid we shall hardly see again; and it was truly observed by Mr. Burke in the house of commons, when I stated the passage of Dr. Johnson, that it was a very wise selection, more than I or the speaker could have found, I take I shall still have more the lead, when I refer you to the expressions of Mr. Burke, where he gives the character of that great man, Sir George Saville. After speaking of him in America, gentlemen, (I am afraid I shall hardly have strength to go through my duty) as to the character of that great person we have unfortunately for many years lost, whether it should be attended with any benefit to the country, we must hear from himself in the letter he published to his constituents, and to the whole world; not taking the

constitution of England in the abstract, but a direct account and explanation of his own opinion, concerning what was transacted by the parliament of Great Britain, which for many years we were obliged to submit to, with hardly a ray of hope of seeing a change. 'I return to you,' says Sir George Saville, 'baffled and dispirited; and that truth obliges me to add, with hardly a ray of hope of seeing any change in the miserable course of public calamities.'

"Such were the thoughts of Sir George Saville—the consequence we saw. America, from being an obedient colony, not thinking as we profess to think of the English government, became a republic, cast off the yoke, and Mr. PAINE, the author, living at that time in America, and acting under the auspices of Mr. Burke, whose book brings him here, and if you read them together, would give you an explanation of a multitude of passages. Mr. Burke and Mr. PAINE walked in the same field of reasoning together; they spoke in different places. Mr. Burke spoke in the parliament of England, such as that great statesman describes it, who had no ears for such sounds. Mr. PAINE spoke to the people, reasoned with them on their condition, told them no people could be bound to the subjection of any sovereignty, further than their own benefit required. Mr. Burke says these arguments are unanswerable. The pamphlet of Common Sense contains all the doctrines that are contained in the Rights of Man, calumniates the form of government, attacks all the principles and corruptions of the houses of parliament, and shews their defects; so does Mr. Burke himself, in his letter to the Sheriff of Bristol, and it justified the Americans in bringing about this glorious and happy revolution. And I take upon me to aver at this moment, there is as great a regard to property, less taxation, less grievances,

grievances, less to deplore, and more to admire, in the constitution of America, than in any other country, any other constitution, any other government, under heaven. I will except none, except our own constitution; and not that, unless it is purged, as it soon will be—purged of those spots which I trust will not destroy wholly the vital parts, though they obscure them. Is not Mr. PAINE to be believed because he was the only one out of three millions that did not remain attached to the crown, and tells you that all the blood that was shed in America was shed by the crown of Great Britain, under the authority of parliament? Such as Sir George Saville describes it, and Mr. Burke. He came over to this country with a mind wholly republican. If you look to his pamphlet of Common Sense, he argues and builds his arguments upon what he has written before; and I should almost say he is a plagiary from himself; for, it is impossible for a man that writes one thing not to have the same thing in his mind. Now let us see what the American revolution in its consequence produced. A revolution which has lately happened in Europe, and likely to make so vast a change upon the face of the earth; how did that revolution arise? It was produced in consequence of that incurable, corrupt, and profligate government that existed in France. God forbid, when I say that corrupt and profligate government, that I should mean it as a sarcasm against that unfortunate monarch, who, for any thing that I know, at this moment may be under affliction, and in a situation that grieves one to think of; no, it is not necessary I should do it; and I cast as little reflection upon that monarch, as I did when I spoke of this country. I do not mean to be understood, to treat the king not only with that duty and obedience which belongs to the sub-

ject, but to conduct myself to him with that justice which I think belongs to him, and is due to his conduct from all men, either in public or private life. When I speak of these abuses and corruptions to our government, I speak of that which the commentator upon our law has stated so particularly, and whose book is put into the hands of every student before he comes here. I mean that unfortunate want of foresight, as he expresses it, of our ancestors.

"Why then, gentlemen, can you suppose that reverend judge was a libeller upon the constitution of this country? He tells you it is from the want of foresight in our ancestors; if it was so, let the foresight of posterity prevent those consequences, and take them into consideration; for, it is not necessary to pull down a whole building because a few tiles are loose; it is not necessary to pull down the whole structure. Then comes Mr. PAINE, at the time the French revolution took place. I am now speaking to you of that which is within the reach of your own knowledge; at the time the French revolution had taken place in that country, that the *Bastille* was destroyed, that the king had been pulled down, and had, by his own consent, become the first magistrate of the people: that had no manner of effect on this country; it would not have any effect, had it not occurred to that celebrated person whose name I before mentioned, to provoke a subject, and which, if it were dangerous to discuss, he led the way to it. I trust it is not to be endured, that the human mind is to be put in fetters: and I trust it does not belong to him, or any other man, to give us our lesson, and to say, this shall be your creed, and that we shall not think for ourselves. He has done that; and, in my opinion, more dangerously distorted the principles of our government. I say, if it be a libel for

any man to mistake the constitution, or to put it upon the footing that will tend to destroy it; Mr. Burke is that libeller. But when I say Mr. Burke is that libeller, I do not mean that he is an object of criminal justice, because I can have no right to make him so. I do not mean, when I am defending the motives of one man, to criminate the motives of another; but I will put the case upon it, and you will find that in the preface, and the introduction, and in the whole body of the work. Now I will give it to you from Mr. Burke himself.

" It happened, gentlemen, when the French revolution pulled down despotism, a great number of persons felt an interest in the event,—an interest well worthy of Englishmen: they saw the fall of a government that had long been the scourge of Great Britain, and which had led to a long, cruel, and desolating war, from its pernicious government; they saw that despotism humbled to the ground; and a gentleman who is now no more, a reverend divine, knowing that the issues of human life are in the hands of God, thought it a matter of just congratulation even from the pulpit, and reminded the people of this country of the glorious deliverance, and the advantage arising from that revolution.

" Gentlemen, it is Dr. Price I speak of. It happened also, that a society of gentlemen, at the time when France was a neutral nation, and under their constitution the monarch was going in triumph, and amidst the crowds of his fellow-citizens, over and over again, to give assent to that which his oath had given sanction, to that system, because in the opinion of a very few; for, Mr. Burke, very unwisely I think, makes it a sarcastic matter of reproach upon the insignificance and the smallness of the body of men, and that their names were never heard of

of till that moment: he thought it a matter for his eloquence to whip those scourges of faction to their kennels, and I take upon me to aver, there was no prosecution, no charge, no man was brought forth as a disaffected subject, there was no scourge of opposition, but he invents this supposed schism, in order to give the king a title which he has not from any body; but Mr. Burke, and which, I am sure, it would be his Majesty's most solemn interest to deny. Mr. Burke, by the by, cites two-thirds of this work, and no man is to put in a reply; a man is to put government on what footing he pleases; a man is to take parts of my book, whatever he pleases, and I am not to answer it, but I am to be tied up from the common right which he assumes to himself. He says they are masters of the commonwealth; the French revolution, say they, was the act of the majesty of the people; the people of England, for instance, wish to make the same change, and have the same right, so says Mr. Burke, that is to say, none at all.

"Gentlemen, if we have been insane for centuries, as the Attorney-General has said, and that it would be to the advantage of this country to throw off the present government, that the people of England cannot do it, for God's sake let that sentiment never be uttered, and I deny, and I firmly deny it; if it be so, for God's sake let policy and wisdom conceal it, and you had better furnish every body with a copy of Mr. PAINE's book, and tell him to write to the public, than put that book of Mr. Burke's into the hands of every man.—Say to a man, look at that constitution; it came down from generation to generation—there it is; it was a glorious struggle that gave it you; there are some obscurities upon it; the same wisdom that gave it you preserves it; it is your own, will

will you have it or not? What is the answer? Yes, I will keep it. But, if I tell a man it is packed upon your back as a beast of burden, you must carry it whether you will have it or not; it is not what your ancestors gave you; remember, I do not affect to say, you or I may stir up rebellion, it is merely my opinion, and may be the opinion of any man; it is like drawing up a curtain before a man that is confined in the dark. I will shew you that Mr. PAINE is not speaking upon the constitution, but merely answering Mr. Burke; he is denying Mr. Burke's principles, which are more dangerous than any that ever came from the English press. What is the revolution? That his Majesty undoubtedly is not an elective monarch; but was it not the people of England who got together, the Lord knows how, and sent for king William? If that convention did not affect to have the forms of law, it was called the convention parliament. Did they give it to him in the line of succession? Did they cut off the Prince of Wales, and might they not, as Mr. Justice Blackstone expressly says they might, have given it to any other family? To be sure they might; and he put it on the footing, that it was the wisdom of our ancestors to depart no farther from the line of succession. It was a matter of discretion, and I maintain it to be the best title; and long may the king and his family live under it! they shall have my vote for its continuance, and it is the best way to live in the affections of the people; and it is not in the power of man to stir the constitution of any country, but from the default of the government; nor is it from any libels that may be written upon the constitution. Mr. Burke is pleased to say so in his 'Thoughts upon the cause of the present discontents;' he thinks fit to speak upon those parts of the government for which Mr. PAINE is arraigned for speaking upon. And I will shew

that

that when I come to that grand part that brought me here to speak to you, that is, the limits, authority, and the liberty of the press. Now let us see whether there be others that differ from us and every right of the people to change their government; to know they can change, and to circulate it among them that they can change; my learned friend will find it difficult to fasten the character of a libeller upon a gentleman whose work now lies before me. Here I shall begin with a modern author; I have the honor of my learned friend's personal acquaintance; he is a man, perhaps, more devoted to the real constitution of his country, as will be found from many parts of his work, than almost any man I am acquainted with. He is a man of great learning; I mean Mr. Paley, Archdeacon of Carlisle, in a work, entitled 'Principles of Moral and Political Philosophy.'

"Gentlemen, he is discussing this point, which was not thought dangerous the other day, and I hope we shall get over this ridiculous panic that makes us think that dangerous where no danger is in it. If the government of this country, like the Christian religion, be of God, it will ſtand; if not, we cannot prevent it from coming to nothing. He was discussing and thinking of the government of this country, and he begins with differing from Mr. Locke, not throughout, but in part, upon the footing of a compact. You will see how different Mr. Burke speaks from Mr. Locke; it is admirable sense, and goes more to give the true notion of government, than any book, and I should wish the attention of every body in this court to it. Mr. Paley says, respecting the inconvenience of a compact, he thought it dangerous to call it a compact; for, if broken ever so little, it is contrary to the will of God, whose will is paramount to all others; he then states this, which

which I think differs a little from the principles of my learned friend. 'No usage, law, or authority whatever, is so binding, that it need or ought to be continued, when it may be changed with advantage to the community. The family of the prince, the order of succession, the prerogative of the crown, the form and parts of the legislature, together with the respective powers, office, duration, and mutual dependency of the several parts, are all only so many laws, mutable like other laws; whenever expediency requires either by the ordinary act of the legislature, or, if the occasion deserve it, by the interposition of the people.' No man can say this gentleman wished to infuse discontent into this country. If you fasten a government upon a man against his consent, and he has an inclination to get rid of it, if he do not like it, and other people approve of it, he will go out of the country; if all people disapprove it, they will make it what meets their approbation, and by that means the government will come to that perfection which cannot be done in a limited number of years, and will stand from age to age; and he goes on to say, and I think he says wisely, 'These points are wont to be approached with a kind of awe; they are represented to the mind as principles of the constitution, settled by our ancestors, and, being settled, to be no more committed to innovation or debate; as foundations never to be stirred; as the terms and conditions of the social compact, to which every citizen of the state has engaged his fidelity by virtue of a promise which he cannot now recal; such reasons have no place in our system.' So says this gentleman; and I now contend, there is no part of this work that advances the proposition.

"Mr. Attorney-General says, Mr. PAINE dislikes the English consitution; he has a right, and I will shew you the wisdom and policy of the English law prevents a man

man being subject to a prosecution for it, and you will see I do not make use of that expression. Gentlemen, Mr. Locke says, and perhaps his might be a libel also, though he was an affectionate servant to King William, high in the service of the state; he wrote before King William was warm upon the throne; and holding a high situation, he put it upon the very same footing, when he wrote in answer to Sir Robert Filmer, as Mr. PAINE writes to Mr. Burke: what does it signify a fig, whether a king exist by divine right, or whether it is from a compact which cannot be altered; whether it be from some thing arising from God or man, does not alter the question. Mr. Locke puts it upon the footing Mr. Paley does.

"Mr. Attorney-General says, the first parts of the rights of man being among the judicious classes of the community, he does not fear concerning it; but when it descended, and was circulated in the lower order, there the evil begins. It may be said, the people being ignorant and discontented was the cause. To this I answer quite the contrary; and, if there be defects introduced by time or corruption, it is not an easy thing to change them; and it is universal throughout the world; so you observe I have no authorities which I have stated, besides an authority I will read that is more in point, the authority of Mr. Burke himself; which shews the footing upon which he put it is not that principle upon which the government can safely stand.—He says, 'the disposition of the people of America is averse to any other than a free government, and this is indication enough to any honest statesman how he ought to adapt whatever power he finds in his hands to their case. If any ask me what a free government is? I answer, that, for any practical purpose, it is what the people think so; and that they, and not I, are the natural,

tal, lawful, and competent judges of this matter. If they practically allow me a greater degree of authority over them than is consistent with any correct ideas of perfect freedom, I ought to thank them for so great a trust; and not to endeavour to prove from thence that they have reasoned amiss, and that having gone so far by analogy, they must hereafter have no enjoyment but my pleasure.'

"Gentlemen, I am sorry to feel myself considerably consumed in strength before I have arrived at what I conceive to be the material object for your consideration. All I have stated has been to lead you to think there is not that novelty in Mr. PAINE's opinions.—I have shewn how they grew up in his life, how his history led to it.—How his situation under General Washington led him to be a republican in belief, and, being so, gave him an opportunity of writing what he believed to be the defects of the English government. I do not mean to put the defence of my cause upon the existence of abuses. I have stated those authors for the reason of shewing you the nature of the liberty of the press, and I shall not be mortified in the least, or dejected, or put down from what I feel to be my own sentiments respecting the liberty of the press. If I should not meet with the approbation of the court in what I state, I shall go out of the court most undoubtedly with a belief of what I know is well founded, that is, that the liberty of the press is as it occurs to you who are to decide it; but I have had opportunities of seeing before now, and it ought to make us cautious before we condemn a man by bell, book, and candle. It is but a year ago I had the opportunity of addressing you upon some of these ideas, and, notwithstanding Mr. Attorney-General may say this is peculiarly for your consideration, you will remember your authority to judge of it; it is but a year

a year old, and I should be very sorry, in the infancy of your jurisdiction, it should be arraigned. I wish to exclude his lordship, and wish he should consider himself wholly out of the case.

"Gentlemen, when I had less to support me, less strength, less knowledge, and less acquaintance with those standing around me, I remember not being treated with contempt or unkindness by Lord Mansfield (for he always treated me with regard and tenderness); with his mighty mind, enlightened with all the learning that belongs to the highest elevated character, he laughed at me, as one laughing at an infant lisping out its prattle, when I ventured to state my ideas upon the constitution, that a man was not to be snapped with a verdict the moment the publication was proved.—Therefore, gentlemen, let us be cautious when we see men on a sudden changing their opinions so entirely. We find the whole parliament unanimous that I was in the right, though so often in the wrong before; and I must feel that it is a great lesson of caution, to be careful before we condemn others, knowing that it is by slow and painful degrees that all the rights of the world have made themselves known. If Mr. Burke is right in his principles of government, that the people cannot change it, then I am wrong; for, no man alive can write about government at all, or the rights of the people, as they have no jurisdiction whatever. But, if the people may change the government upon the genuine principles of government, they are a competent jurisdiction; and therefore Mr. PAINE has, *bonâ fide*, written for the consideration of the whole people of England, whether the government of England is right or wrong, whether it is subject to these imperfections. Mr. Attorney-General thinks that Mr. PAINE wrote the many things he has here written without these imperfections existing;

sting; but his habit of life throughout shew that he wrote to the whole nation. Now let us see what has been the case, and I will give you some authorities of the progress of society, and the civilization of government, from the earliest accounts to this time; and then you will see if we should not have been in the woods, with dreadful ignorance, whether religious or political, if every man had been condemned as a criminal who had dared to advance any doctrine upon government. Are men to arise at no change or perfection but by the blood absolutely of the innocent?

"Gentlemen, I am defending an humble individual, and it is said of him he is only addicted to consider religious topics when drunk; but I am standing for a much more valuable object—the liberty of the press. That I may know my condemnation may not go with it, and that I may not be criminal to-morrow, let us see what the course of the world has been with respect to the dissemination of truth. Let it be remembered, that the Universal God that created us was one of the first martyrs to the dissemination of truth; that he came with that divine qualification; he expired upon the cross for stating that which was the object of scorn to all that it was stated to; his followers experienced the same fate.—Why did they follow the same fate?—Our Saviour might have done like the Mahometan prophet: he might have come and promulgated that which was growing by slow degrees; he might have spread it at once over the whole world by devastation and conquest: he came to confound the pride of man, and he came to preach up those universal and equal rights which are the great privileges of mankind in every age of the world; he came therefore in that low estate he is represented, and preached his doctrines and his consolations to the poor. We find, subsequent to that

time, as the conversion to the church began, political power, and ecclesiastical power, going hand in hand, making havock throughout the world, beating down truth, and wounding by ignorance and superstition, till the revival of letters and learning began to advance upon the world. You will find superstition advancing a second time.

" Gentlemen, if you see in what manner the liberty of the press began in this country, or rather at what time its freedom was first abridged; if you will look into the books of the law, you will find no man punished, or punishable for the propagation of opinion, till the erection of the Star-Chamber in the year 1637. Now I admit the safety of every community ought to be the rule; and my learned friend can shew to me that the safety of this country depends on the speaking of the freedom of the people, that it is implicated in the freedom of all principles of government, then I shall admit the freedom of the law should pursue this gentleman. Has it that effect? Gentlemen, during the time the press was laid under fetters, during the time it was made subject to a licence, that no man should print a work unless he had a licence, and until he had the authority of the state; during the short period, which was but for eleven years, that that government lasted, all the authority of the government was coming to ruin, and terminated with that foul catastrophe and tragedy, the death of King Charles the First; that is to say, in the ignorance of the people in preventing the freedom of communication. It is the freedom of communication that prevents evil; let men communicate their sentiments to one another, it is like fire scattered on the ground, or like gunpowder scattered on the surface of the earth; it communicates, but the explosion is not heard: keep it under constraint, it is like gunpowder compressed, and like subterraneous fire, whose

agitation is unseen till it bursts into an earthquake. Let argument be opposed by argument, and reason be opposed to reason, and the country is safe. In the time of Oliver Cromwell it was the same; in the reign of Charles the Second, how soon was that done away by a revolution! All those cobwebs were swept away, all were destroyed, and the country has lasted for a century without them; the vital parts of the constitution have been inculcated, and the nation has been safe. Gentlemen, I will state to you some great writers of great authority on this subject; and here I would humbly suggest to his lordship, that in a case of this sort it is impossible to give authorities, and go to books of the law, with the same precision as we look for authorities in cases of particular description: as if, for instance, the question be, whether an individual be guilty of slander, and we go to books to see what had been considered slander by the law of England: but in a subject of this sort you can go nowhere but to the sense and opinion of the jury, and that sense is to be taken and compared with what has been written by one individual with what in general is tolerated throughout the realm. I know, if I was to state to my lord, that twenty men had written things libellous, and not shewing this is not one, he might say, that does not shew your client has not written one. If you will read matter written by other people, which is reprehensible, it is another thing. But, gentlemen, if I shall shew libels in the writings of men that are considered as classics in the language, which are suffered to be printed and reprinted, certainly that observation will not arise. Gentlemen, I will read to you what is written by a person undoubtedly of the most sublime genius; and not only that, but a man of the greatest virtues; a person whom I am sure my learned friend will think at least a great authority in point of learning, how-

ever he might be of opinion he was a republican and leveller in his writings and principles; it only shews that a man may be a republican and a good man, as most undoubtedly that man was. Gentlemen, I speak of the poet Milton, who wrote, in the beginning of the Commonwealth, against an act made by Oliver Cromwell's parliament to tie up the liberty of the press. Mr. Attorney-General may say, and so far he will say with truth, there is a difference between a previous distinction and punishment for an overt act which is committed while the press is free; and undoubtedly there is one great distinction; but, in my humble opinion, if every thing is to be judged a libel that does not fall within the principles of the government of the country in what was written, it would be better infinitely there should be a licenser than not. If I publish under a licence, I do it with authority, and publish with safety, I send my book to a magistrate, who is to judge and examine its contents; if he disapproves it, I will withdraw it; if he approves it, I am safe; for, if a licenser is appointed by government, he must judge of the book I present to him, and he must approve it before I can publish it: but, if there is no magistrate appointed by the law of England, the press is free in the first instance, and every man may say and publish as he pleases. It is material, certainly, that every man should know upon what principle that judgment should be formed; for, if that judgment is to be formed upon the jury, not being of the same opinion with the writer, no man would venture or dare to put his mind on paper upon any subject in the world: therefore it depends on the principles on which he wrote, and what were the purposes of his sentiments.

"Gentlemen, Milton mentions Galileo. Now, when Milton saw Galileo, he was confined, because, upon seeing the phases of Venus in the telescope, he embraced the Copernican

Copernican system, and was led to believe that the sun was in the centre of that system. He ended his illustrious life in prison for only stating the sun to be in the centre of that system, which we all now know it is, and which enable us to extend our navigation to the farthest corners of the world, and to carry our line and rule to the dimensions of the works of the Great God: yet for those truths you find that man was condemned by the inquisition for an opinion of his own, because it was different from the confined ideas of the days in which he lived. Gentlemen, remember I am not bringing you to think or believe, though we may think hereafter, or more probably will think hereafter, that the English constitution is inferior to the constitution which my client approves; but it is enough for my argument that it is speculatively: he speaks of it in the answer to the book which puts the different parts of magistracy in a different manner to which he thought it should be put. Gentlemen, there is another author, whose opinion concerning the liberty of the press perhaps you may think more in point; he was an authority living much nearer our own times; he is a man who cannot be supposed to be carrying liberty farther than it ought to be; a man that held the highest and most enlarged principles of government. I speak of Mr. Hume; and he considers this liberty of the press, finding fault with the constitution, as the grand source of the liberty of the country: those grand principles account for the great liberty of the press in England, by which all the wit, genius, and learning of the nation may be employed on the side of freedom, and every one may write his own sentiments. Gentlemen, this doctrine seems to me cut down and pared to nothing; for, if I cannot write against the forms of the English government, then I cannot write against any part of it, I cannot find

fault with it, I cannot say the King's Bench ought to be abrogated, I cannot speak against the Court of Chancery; I cannot, in short, make any one remark which would tend to make any alteration in the constitution or government. There are two other authorities I will cite to you on the subject; they are both of them peers of parliament, and therefore judges of the law: one of them is a lawyer high in the administration of magistracy; and the other is no longer living, but made a splendid appearance while member in the upper house of parliament, and was attached most unquestionably to the king, as he held an high office under the king at the time he wrote this; I speak of the Earl of Chesterfield. 'There is the difficulty of distinguishing between liberty and licentiousness; one of the greatest blessings people can enjoy is liberty; but every good in this life has its alloy.'

Lord Kenyon. "I believe the writer of the life of Dr. Johnson speaks of that very speech, and claims that part."

Mr. Erskine. "It is extremely true; Lord Chesterfield is supposed to borrow that which I am now about to state."

Lord Kenyon. "That very speech written by Dr. Johnson."

Mr. Erskine. "If that is so, it certainly places me higher than I had any right to place myself. Though Lord Chesterfield was a great and ingenious wit, he certainly was far lower, and inferior in understanding, than the celebrated writer to whom my lord has now alluded. If ever there was a man that professed himself an enemy to any thing that looked like political freedom, if ever there was a man that would knock down with a hammer every thing that had it, it was Dr. Johnson; therefore I am much obliged to his lordship for his information. He says one of the greatest blessings a man can enjoy is liberty; for, there

there is such a connection between licentiousness and liberty, that it is not easy to correct the one without dangerously wounding the other. It is extremely hard to distinguish the true limit between them; like a changeable silk, we can easily see there are two different colors, but we cannot easily discover where the one ends or where the other begins. He concludes that arbitrary power has seldom or ever been introduced; and I confess myself much obliged to his lordship for giving this passage to Dr. Johnson. Gentlemen, I confess I cannot help agreeing with the learned author of this observation. My learned friend, who has just now gone out of court, has not given you any principle: he has not told you what it is a man may not safely write, if this particular book is condemned. If, indeed, it is true, that a man did contemplate the misery of the people of Great Britain, and thought as you and I do upon the government, he might think this book was written with an evil intention; but most probably he did not think of it as we do. I should be glad to know how much short of what Mr. PAINE has written any man may write. May I say a republic is a better thing than a monarchy?—May I say this constitution would be better without a house of lords?—Is there any language in which I may express those sentiments, or does a libel consist in the saucy manner in which the sentiment is expressed? If so, where is the boundary to be drawn? How am I to know when I am within the limits of the press or not.

"I think there is a noble person I have described, whose mind is not turned to introduce disorder into the state, or extend the privileges of the public beyond what the law now is; I mean Lord Loughborough, chief justice of the Common Pleas. I believe I can answer for the correctness of this. My Lord Loughborough gives

this opinion, and I shall follow it up with an authority of the Earl of Stanhope; as I may overlook it, I will take that first. He says, with great shrewdness, after alluding to what fell from Lord Loughborough, 'The thing that is illegal, is the exciting any one to sedition or to a breach of the peace. The question therefore upon a libel is, whether a paper published did thus excite, and was so intended; consequently, mere speculative writings on the constitution are not libels, however absurd they may be; suppose, for instance, that a man were to write a speculative work to prove, that a trial by a single judge would be far preferable to the trial by jury; or that a parliament, composed only of a king and house of peers, would be, beyond comparison, better than the legislature of king, lords, and commons; no man could possibly reprobate such a work more than I should; but if the work did not excite people to sedition, such a speculative publication could certainly never be deemed a libel. If our boasted liberty of the press were to consist only to write in praise of the constitution, that is a liberty enjoyed under many an arbitrary government. I suppose it would not be deemed quite an unpardonable offence, even by the Empress of Russia, if any man were to take it into his head to write a panegyric upon the Russian form of government; such a liberty as that might therefore properly be called the Russian liberty of the press; but the English liberty of the press is of a very different description, for, by the law of England, it is not prohibited to publish speculative works upon the constitution, whether they contain praise or censure. The liberty of the press is of inestimable value, for without it this nation might soon be as thoroughly enslaved as France was, or as Turkey is; every man, who detests the whole government of France, and the present government of Turkey

Turkey, must be therefore earnest to secure that palladium of liberty, and must also be anxious to preserve to the people the inviolate trial by jury, that transcendent, that incomparable and guardian right.'

"Therefore you see, gentlemen, as far at least as general principle goes, we have ideas in the opinions of persons; if this is not true, the noble lord is writing a libel himself, for exciting people to do all these things contrary to the law made by the upper house of parliament. Now, gentlemen, as to Lord Loughborough's motion, if I was to read it, I believe it would be correct. Gentlemen, you observe, if Mr. Attorney-General says, not extending the circulation of it by acts of his own, he has put no such fact upon record, there is no evidence of it; he has not charged any particular circumstance or act of the defendant antecedent to writing this book; he has shewn you no declaration of his country to those of a good subject; he has shewn you no conversation which marked him to say, we shall see confusion in England, and such destruction as is going on in France. I would give up my brief if it was so, for it would give the lie in his preface; it would have shewn he did not address himself to the universal reason of the people of England, but that he thought to introduce misery among the various classes of mankind in this country. Gentlemen, therefore, I stand before you on this ground, which brings me to remark upon the passages, and then I have done. I am not surprized, because, when I consider the nature of the human mind, how much I have to struggle against in your opinions, and know you are anxious to retire from the consideration of the business; I know your justice will indulge me with the hearing of what it is my duty to state to you. I stand at this bar for the purpose of giving a criminal, arraigned before you, that defence

fence which the law entitles him to; if any part is inconsistent, my lord will stop me; if any thing is improper, if it can be answered, or if it is so clear in your mind as not to require any, your verdict will in a moment overthrow all that I have been saying. Our duties are of a very different nature; you will discharge your duty while I discharge mine: it is not mine to judge, but to lay the materials before you to judge; the same right any man has, Mr. PAINE has.—When my lord and I were engaged together in 1780, I do not imagine we were considered as contending for the propriety of assaulting the house of commons, or putting the city of London into a conflagration; I am doing that to-day which my lord and I did in court together then. What I am doing now is in expectation of justice; and his lordship, I have no doubt, will think no disgrace or obloquy, that any man can state, should be thrown out against me for having done my duty in the manner I have done it. Some have stated that I am zealous from disaffection! others, that I am solicitous to shew my abilities from vanity: though, if there were any situation which would forbid a man to do it, it must be this, when he is to contend, and obliged to speak against the most innate feelings of the mind; when he is obliged, by looking round, to see so many countenances expressing no very great sense of approbation at what he is maintaining with all his strength and feels his duty, and shall to the latest hour of his breath, and hopes to maintain that strength and collection so necessary to support so painful, laborious, and unpleasant a duty, as my situation call upon me to perform.

"Gentlemen, I come now, and then I have finished, which will not be long, and shall relieve you from the pain of hearing me any longer, to observe upon the passages in this book. I am sure, to every candid mind, it will operate

operate as an excuse. If I had set about commenting upon these passages, without having laid a foundation for my argument by authorities written by other persons, you could not have understood the text; and I know it would have been impossible to have received any attention from you if I had not done so; you would have gone out of the court and said, as lovers of the constitution, shall we not condemn this man?—I tell you, I expect your verdict upon no such foundation. If you were called upon by truth and justice to give a verdict, I should think you might say, we are of opinion that the king, lords, and commons are not only in the original constitution the best established government, and the most beneficial, but we believe none of the corruptions stated are in it, and we acquit the defendant because he thought otherwise, and did it without looking to any particular magistrate; and that these criticisms did not apply to any particular person in the country. If that appears upon the face of your judgment, then I say the public is not injured, and the liberty of the press is not wounded through any man's side; but if you transgress those bounds laid down by the policy of the law; you make a snare for others; therefore, all I seek for is the establishment of that principle, leaving you to compare the facts, and see whether they have any application. With respect to the first passage, I shall do it away in a moment: it says, 'All hereditary government is in its nature tyranny. An heritable or inheritable throne, or by what other fanciful name such things may be called, have no other significant explanation, than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds.'

"Is it to be endured, says the Attorney-General, the people

people are to be told they are like so many sheep and oxen?

"Certainly not. I am of opinion, a more dangerous doctrine cannot be instilled into the people of England. Mr. PAINE is not doing that, when he states they are like flocks and herds, he is writing in answer to Mr. Burke's book, that asserts the hereditary monarchy is fastened on the people, without any consent of their own. But, says Mr. PAINE, I deny that that is the constitution of England: the king is the magistrate of the people, how then can you inherit them? The king, lords, and commons, represent the people, and can confer the throne upon his lordship or you, or me; they represent the whole people of England, and therefore, says Mr. PAINE, there is no such king as you represent inheriting the people by absolute necessity, or 'that to inherit a government is to inherit the people, as if they were flocks and herds.' And so Mr. Locke expresses it. No man can consent farther for himself; for he says no man, by any compact whatever, can bind his posterity. So says Locke, and so says PAINE; therefore it is not the king of England, it is the king of France, it is the emperor, and the king of Prussia; it is all those monarchs that are fastened upon their unwilling subjects; therefore, he says, that species of inheritance to inherit the people is not binding; but, if I myself am the shepherd, does any body inherit me like a flock? If I by my free consent give up my liberty, nobody is to blame. I am the guardian and protector of the government. I may be wrong in attacking the foundation of the British government, but I am not wrong in saying Mr. Burke says it; therefore Mr. PAINE contradicts Mr. Burke in his explanation of an heritable crown: he is distinguishing the king of England, as he ought to

be distinguished from that title, the most unpleasant to fasten upon a prince; he considers him as a maj sty of the people, and therefore not inheriting us like herds and flocks; therefore, I think this passage is out of this case entirely.

" Gentlemen, the next is, what I think extraordinary, my learned friend, from page 21 leaps over to page 47, and begins in these words: ' This convention,'—you will see what convention he is speaking of; he is making a comparison between the convention of America and that which took place on the revolution in France—he says, ' this convention met at Philadelphia in May 1787, of which general Washington was elected president;—he was not at that time connected with any of the state governments or with congress; he delivered up his commission when the war ended, and since then lived a private citizen.

' The convention went deeply into all the subjects; and having, after a variety of debate and investigation, agreed among themselves upon the several parts of a federal constitution, the next question was the manner of giving it authority and practice.

' For this purpose they did not, like a cabal of courtiers, send for a Dutch stadtholder, or a German elector; but they referred the whole matter to the sense and interest of the country.'

" Now, gentlemen, I apprehend, whether king William was brought over here by the soundest and justest motives of the whole people acting for themselves, or whether he was brought over here by those motives which very frequently have a share in the most refined establishments, signifies not a farthing; the author of the commentaries upon our laws warns us not to fix our regard or obedience to the government; but considering the

the motives of our ancestors that established them, it is enough that it is established. I should love the constitution of the country just as much, and be as happy, as if all those rights that were brought about by king William had been brought about by demons. Do *you*, any of you love the reformation the less, because it was brought about by Henry VIII.? Because his motives were bad, and he had squandered the treasures of his father, and had put to death one woman to marry another his affections had been fixed upon, and though he did it from the most degenerate motives, does it alter the reformation or affect its priority, or in the smallest degree affect the prince or hurt the title of the king who sits upon the throne of this country?—Will my learned friend say, if I were to write a whole volume against Harry VIII. with the most pointed asperity, that I should be convicted of a libel? Where is the difference, whether it be one or two centuries ago it happened?—It was not in the smallest degree libellous, if it were, you will find that one of our most valuable historians had been guilty of it: he gives it us from the records of the country, the manner in which king William and his creatures brought this about; he would be answerable for a libel if Mr. PAINE is convicted for writing this; and it is impossible any man can write a page of history if that is the case. Mr. Hume states the intrigues which paved the way for king William's coming to the throne: he says,

'It must be confessed, that the former articles of the great charter contain such mitigations and explanations of the feudal law as are reasonable and equitable; and that the latter involve all the chief outlines of a loyal government, and provide for the equal distribution of justice, and free enjoyment of property; the great object for which political society was at first founded by men, which the

the people have a perpetual right to recal, and which no time, nor precedent, nor statute, nor positive institutions, ought to deter them from keeping ever uppermost in their thoughts and attention.'

"And thus the revolution was brought about by a coalition of the parties of the court: what matters it by what means it was brought about—the question is, what is the thing about? And whether it stands upon the consent of our ancestors, followed up and kept in existence by our own? If it is, no man can rebel against it without being a victim to the laws. All I am arguing for is the freedom of opinion, not the freedom of conduct which is bound, as Mr. PAINE says, in every part of this work, by the institution, by which a man is called upon to live. With respect to what has been said of the Edwards and Henries, surely my learned friend will not arraign this, because the author is not well enough read to know that Edward III. was a great prince and king, and because he names him with the Henries it is a libel; but, says he, he tells you there was no constitution up to the revolution, but that all the constitution was got piece-meal, by the people struggling with those tyrants. I say so; and I think it for the honor and advantage of the country, that it should be known. How is it possible to say Magna Charta was not taken from king John, that assumed power which he over and over again asserted? Two-and-forty times the statute of Magna Charta has been re-enacted; sometimes with arms in the hands of the people; and king John was forced to sign it at Runnemede. The people took it as their inheritance; they had a right to it. How is it with respect to the other parts? How did they establish it at the revolution, and in every other part of our history?

"Gentlemen,

"Gentlemen, I was observing they were taken by the people with arms in their hands; and it was given as a thesis in the different universities, and it happened to be allotted to me, while I was under the discipline of a college of England, to maintain, and a reward for maintaining successfully, that the liberty of the people of England at the revolution did not arise from any remains of the Saxon liberty, but it arose from the oppressive system of the Normans; it carried the spirit of freedom from man to man, from one end of the kingdom to the other; and by slow degrees, by imperceptible and successful struggles, that was obtained from those princes whose power was assumed, in violation of those rights which are unalienable, and belong to all mankind. Mr. Hume himself states expressly, that the constitution of this country was nearly an absolute monarchy, notwithstanding the numerous panegyrics upon it. It is impossible to say one man is to be punished for what another man has written, who has become a classic in the language. All the world will not make that intelligible. Notwithstanding all the numerous panegyrics upon English liberty, it may be said to be an absolute monarchy until the last century; it appears so from all Mr. Hume has recorded. Shall it be said, if a grave historian writes that, that another man shall be made criminal for asserting the same principles?

"Gentlemen, the next passage arraigned is this: 'The attention of the government of England; I rather chuse to call it by this name than the English government, (though, if there is any difference, I am sure I do not comprehend it) appears, since its political connection with Germany, to be so completely engrossed, and absorbed by foreign affairs, and the means of raising taxes, that it seems

seems to exist for no other purposes: domestic concerns are neglected, and with respect to regular law, there is scarcely such a thing.'

"That the government of this country, in consequence of that connection, has certainly been loaded with a great number of taxes, I believe no man can doubt: when a man contemplates the vast system of revenue, he may be led to a thought of that sort; he does not arraign the administration of law or justice; he does not say the law is administered without regard to truth, or that the magistrates are corrupt: if he had done so, that I admit would be a libel. He states, (which has been stated over and over again from the pulpits of this country,) that the law of this country is mainly defective; that it wants that which should belong to it, and is overloaded with a variety of forms that tend, of many subjects that are brought, to apply.

"Gentlemen, I am not arguing for the right of free discussion; let us see whether we cannot find authors that speak their opinions from palaces, (where certainly nothing seditious would be endured,) and draw a comparison of the law of England, and that country whence Mr. PAINE came, America. This is observed by Mr. Newcombe de Cappe, and you will find others taking notice of our jurisprudence, by those called upon to administer the law from the bench; therefore, the gentleman's observation, as to the law, does not appear to be that species of attack that falls within the description of a libel, if you take it in the sense I am giving it, and in the sense I wish you to consider. Gentlemen, with respect to the house of lords, I believe I shall be able to shew you the very person who introduced this controversy, and who is considered, by those that are interested in the government at present, as a man truly devoted to

maintain the government of the country in the highest order and preservation. He has made remarks not kinder, and you will think more severe, than the Attorney-General did to-day. He says that two houses appear to be effectually influenced into one, though not in their original construction. Mr. Burke is pleased to say of the house of lords in these words: 'It is something more than a century ago since we voted the house of lords useless, and they have now voted themselves so; and the whole heap of reformation (speaking of the house of commons) is cast upon us.'

"He does not speak of it in the house, or merely in his place in parliament, but it is printed and reprinted; and a new edition was published not above three months ago, and circulated through the public. This passage still stands its ground; he thought it applicable to remark upon the abuses which prevails in parliament, and which may lead to various serious consequences, if not considered by the people of this country.

"Gentlemen of the jury, this was held out upon a recent occasion, by that person who is now in the highest situation in his Majesty's councils, and who has the confidence of the nation, as I am given to understand, and who has the order of the state put into his hands. I am not meaning to calumniate him; but in my opinion that was the brightest passage of his life, and I should have thought him brighter if he had continued in those sentiments. That right honorable gentleman I have a right to speak of, and make use of as an authority for his talents, rank in the country, and various circumstances that attend to adorn him; but I think, gentlemen, it would be a hard thing, not only upon the defendant, but a hard thing upon the country, if it is to be decided, that that which is to be done with impunity and with approbation,

approbation, and spoken highly of by one man, should bring another man to a pillory or a prison. What is the assertion of Mr. PAINE? That the minister touches the house of lords with an opium wand, and that it sleeps obedience. Does he mean to say, that is any part of the original misfoundation of it? Does he say, it has descended from generation to generation? He does not; he gives it that root and foundation Sir George Saville, that illustrious patriot, gives it; who tells you that the house of commons was in his time what Mr. PAINE represents it; that the house of lords was what Mr. PAINE represents it; and all attempts to reform it would be ridiculous, except those, the foundation of what is written in this book.

"I observed my learned friend raise his voice, as if any thing concerning Mr. Horne Tooke was to be a reason why the defendant was not to have the same judgment as if Mr. Horne Tooke's name had not been mentioned. Let us see what is decided by the right honorable gentleman, at the time I am considering him that illustrious patriot, for the preservation of that constitution we live under. I hope and trust, whatever may be the event of this day, you will not surrender any part of the liberty of the press, or any part of the genuine freedom or benefits arising from it to this country; and though I have the unpleasant sensation of knowing I make no effect on your minds, yet I must discharge my duty in the minds of those who hear me. I will maintain my own here and every where; and with unabated patience and perseverance will I go through what I take to be my task.

"This was recorded, and sent throughout the country; it is in these words, signed by the right honorable gentle-

man, by the Duke of Richmond, Lord Stanhope, and Mr. Wyndham, but particularly the name of the Duke of Richmond stands at the head of it; when I say that right honorable gentleman, I mean the right honorable William Pitt. This declaration was published not as an abstract of speculative writing, but as a writing published within a week after the house of commons decreed they would make no alteration in the commons house of parliament: they met at the Thatched-house, (and they had a right to do it,) and gave their opinions to the people of this country: were they prosecuted for libels? I desire you, as men of honor, and as men of truth, to judge of Mr. PAINE's book, which talks of the minister with his opium wand. Mr. Burke, at that time of day, says, 'In consequence of this corrupt and venal parliament, in consequence of the influence of the crown extending throughout the realm taken together—.' What is the cure Mr. Burke prescribes? He tells you the people without doors are to be excited to look to those evils. I will read it in his own words: he says, 'Let equal justice be done; don't let one man be burnt in effigy for affection to government, while other men are enjoying all the sweets that belong to a supposed attachment to the constitution.' He says this, 'The distempers of monarchy would be a great subject of apprehension; it is not parliament alone that can remedy it; and the people ought to be excited to a more strict attention to the conduct of their representatives.' In God's name, gentlemen, how are they to know it, I cannot say it in general terms in the house of parliament, without venturing to advance a libel? How am I to come forward, as it is one of my privileges to come forward, and warn the people of England of the conduct of this or that man; he says, 'He writes not to them only, but to the whole people

people of England, and it ought to be settled in the meetings.'

"Now, gentlemen, the English of it is this: These seditious publications, which are so loudly talked of, were in the market all that time, as my learned friend stated; no man thought of it, no man talked of it at the time, when a certain number of persons proposed what I have read out of that green book; in another place, no information was upon the file; but no sooner this was published, than we hear the kingdom was to be overturned by persons presuming to publish sarcasms and libels. My opinion is, the government will never be affected by any libel; let it be corrected by its own purity; as Dr. Johnson says, 'If they examine their own conduct they will find the cause; let them correct it, and they will find the remedy.' I trust it is one of the dearest privileges the people have, to examine and watch over every part of the government of the country; and the press ought to be free for a man's consideration, to make what remarks he pleases, touching the frailty of the structure, or any part of the government, whether it be frail in itself, or rendered frail by those acts arising from its being constituted such a number of years—provided you think the man who wrote it believed in those imperfections, and the advantage or disadvantages. I think that any person standing here upon his trial, for giving that little account I have been reading, cannot be guilty of a libel. Let us remember what it is this celebrated person says, when he is speaking of lords and commons, and why he would have abolished some of those high offices about the king's person. You all know I speak of Mr. Burke; he says, among other things, 'If those salaries are taken away, the nobles would desert the court.'

"I do not agree with Mr. Burke in his position; I dismiss the position, as I think it a scurrilous shabby attack upon the nobles of the land, and upon his majesty; and though Mr. Burke has a right to write so, I say it is an infinitely fouler attack than the present. I hope your lordship understands me, I am speaking of it with disapprobation. What does he say? He says, 'A king is naturally a man who is fond of low company, is fond of the lowest and worse miscreants; therefore we must first get this necessary thing, and then we must take care to bribe that part of it; a parcel of fellows, not fit for any thing; and take care of another part that is equally as bad, though not quite so bad as fidlers and buffoons.'—Gentlemen, that is a sarcasm upon the British constitution; but mix it with the whole of the matter contained in the man's book. If he writes any thing about the king, he must be convicted, and I would not defend him; I must stand in my place to do my duty, which would be over in an instant, though it is not charged even on record to be a libel upon the king's majesty. I say it does not include the king. Does the Attorney-General say it does? If he does I can call for a verdict; but if my learned friend chooses to change his *inuendo*, he shall do it now; but no jury could find an *inuendo* which there is no evidence to support. With respect to those publications that speak about monarchy, what a wonderful instance have you in Harrington! I do not know whether it did not come from some publishing societies. He was represented as a republican writer, that had been promoting the murder of king Charles I.; a low obscure man, who had no wish but that which every desperate man has, of pulling down what was established.

"It does divert one to see those persons write thus, though

though I dare not be angry with any body that writes; but these are a set of fellows, who will let nobody write but themselves; they publish books, and you have them thrown into your chaise in answer to this book; but if any man would give notice of it, and undertake to prosecute and aid the civil magistrate, not those that the Attorney-General thinks objects of prosecution, but a set of gentlemen who choose to call themselves lawyers also; this conspiracy, as they call it, and I call upon my lord to support me, that where a man is standing upon his trial for publishing what he has written upon the constitution; are these the means by which Englishmen are taught to love it? I say, if this man was stained with blood instead of ink, if he was covered with crimes at which human nature would shudder, still he is equally intitled to that hearing allowed him, and which he has a right to as a member of the constitution. Gentlemen, I stand here as an advocate for this man; and if I had not a considerable degree of presence of mind, arising from considerable experience, I should have been beat down long ago, not but that you have given me a most painful and obliging attention, but because I know every avenue is choaked up against me; I know the whole press is printed against me, and this man by name: all the engines of government have been employed against him; and in the commons house of parliament they have named him, and prejudged his work.

"I gave my sentiments as an English lawyer; which was consistent with that dignity of character which I hold in that assembly. I have nothing to hope or fear from doing my duty, which I will not shrink from, but will persevere in it to the last. Gentlemen, it is said, that the man I alluded to, who has written any thing like it, is as great a thief, and as obscure a ruffian, as this man.

Gentlemen, this Mr. Harrington, this low blackguard, this murderer of princes, this blood-stained ruffian, is descended (you will see it for six-pence at the Herald's office) from eight dukes, three marquisses, seven earls, twenty-seven baronets, thirty-six barons, of which number sixteen were knights of the garter. If this cause was tried in Germany instead of England, (I have a right to be heard,) what was he? Besides, he lived in the reign of Charles I. Oh brutal ignorance of the history of this country! And this is his most affectionate servant: and it is observed he was a republican, by what the historian says. Toland says, I cannot too much boast of the man, the king's favourite: I know not which most to commend, the king for trusting an honest man, though of republican principles, or Harrington for owning his principles while he served the king. How did he serve him? May all men who profess monarchy so serve their monarchs! He staid with him in the Isle of Wight, to watch the fortune of his royal master; he came up by stealth; he hid himself in the boot of the coach, to take a last farewell of him, and fell into his arms; and afterwards fainted on the scaffold, at the feet of his expiring master. After the death of Charles, he wrote his famous Oceana; and after paying tribute to a virtuous and unfortunate master, he contended it was not Charles I. that brought on his own death, but the evil nature of monarchies.

"Gentlemen, then it was the seizure of books began by that tyrant Cromwell; and you first begin to learn what a wise man Cromwell was. Harrington begged his book from Cromwell's favorite daughter; and seeing her infant at her side, he snatched it up in his arms and ran away. Alarmed for its fate, the mother followed him. Said he, 'I have taken your child, and I know what you feel

feel for its loss; your father has got my child'—meaning his publication. 'I restore to you your child—supplicate your father to restore mine.' The daughter petitioned her father, and Cromwell yielded. Says he, 'I will give it you; for, if my government is made to stand, it will never be hurt by this paper-shot.' Nor will any government, as Milton says. Let another man read it; let him answer it—that is, another way; let him do as Mr. Adams did. I contend, that out of a coalition of writers truth is to come. I do not quarrel with Mr. Adams for writing his opinions; so said a celebrated person, who was an ornament to his country, the president Montesquieu. Says he, 'It is not material, in a free country, how men reason: the coalition of reasoning brings forth the truth, and that truth is the basis of the best and surest government, as long as people are capable of knowing its value.' Gentlemen, let me then address you in, I think, language the most affectionate it is possible to hear, here or any where; an extract from the same author I mentioned before, where he raises at once, in that sublime and glorious manner of writing and thinking, so peculiar to that poet, Milton; a man—how shall I describe him?—No copier of any thing that is human; he looked up to that sublime source, as he describes it, the universal God and father of the world, who, as he expresses it, is the source of all wisdom, and who sendeth out his sun, and touches with the hallowed fire of his altar, those lips which he pleases to inspire. Methinks I see it so; I think I see not the distinction of the English constitution;—but I think I see what Milton thought he then saw; but which unfortunately never came to pass. The country is, forsooth, in danger by the publication of a sixpenny pamphlet, but the auspices of the greatest statesman are eminently so; a man whom

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to name is to honor and admire; a man whom no history can shew a greater, nor any private acquaintance more dear; a man who is loved with the affection of a friend; a man who put to its hazard his ease and darling popularity, for the benefit of the people of the land; that he was born by his mighty talents to cultivate and reduce to order. This is the character given to Mr. Fox by Mr. Burke; and this is the man with whom, says he, I have lived in the greatest friendship, and whom, I may say, I have lived to see treated in the manner I have unfortunately witnessed.

"Gentlemen, I have but a few words more to trouble you with, if you will have the goodness to hear me; and that is this: I wish that this man may be judged of by you in the manner I have been proposing; that all this freedom, though it is not any other freedom than belongs to the constitution of the country. Remember, I am not asking the verdict for him, on any other institution than the law of England. I am not desiring your decision on any other constitution. The policy of Great Britain is not to have a jealousy over her subjects, to know what is for the benefit of the whole community. The subjects of England are affected to whatever is right and honest; and let reason be reason, let truth and falsehood oppose and fight one another, but it is better to pursue this course with respect to Englishmen which was proposed by Lord Chatham. Do not think they are to be bent to your purpose by a froward conduct.

Be to their faults a little blind;
Be to their virtues very kind:
Let all their thoughts be unconfin'd,
And clap your padlock on their mind.

"Do

"Do not limit their conception; and do not imagine with the Attorney-General, that they are to be led away either by argument, or by sarcasm: but it is to operate by degrees, it is to engage their affections, convince their reason, and they will be loyal from the only principle that can make loyalty sincere, vigorous, or rational; a conviction which will operate by degrees, that is, their truest interest, and that their form of government is for their common good: constraint is the natural parent of resistance, and this doctrine is by no means novel. In all histories of former times, it has always been express and convincing, that where one side has been tyrannical, the other side, that was in opposition to it, has been refractory: on the other hand, all nations have considered the contrary, even as long ago as Lucian. You all remember, gentlemen, the pleasant story in that fable of his, respecting the countryman and Jupiter; they were conversing with great freedom and familiarity on the subjects of heaven and earth; the countryman listened with great attention, and acquiesced in the conversation so long as Jupiter tried only to convince him by reason and argument; but the countryman happening to hint a doubt as to the truth and propriety of something which Jupiter had advanced, he instantly turned round and threatened him with his thunder. 'No,' says the countryman, 'if you up with your thunder, I believe you are in the wrong; you are always wrong when you appeal to your thunder; as long as you have reason on your side, I believe you may be right, but I cannot fight against thunder.' So, Gentlemen, I cannot fight against the voice of the people of England; and God forbid I should! I am an obedient subject and servant of the law—to that rule of action I shall ever give my voice, opinion, and conduct. You may condemn my conduct, but I shall ever do as I have been

doing to-day; I hope, with confidence, that I am not transgressing those rules in doing the duties of my situation, which are accidentally cast upon me."

Notwithstanding this very ingenious and elaborate defence of Mr. PAINE by Mr. Erskine, the jury immediately gave their verdict, GUILTY.

DEFENCE of JOHN HORNE, Esq. on an information against him in the court of King's Bench, by the ATTORNEY-GENERAL, for a libel, 4th of July, 1777, at Guildhall in the city of London, before Lord MANSFIELD and a Special jury.

"Gentlemen of the Jury,

"I am much happier, gentlemen, in addressing myself to you, and I hope and believe I shall be much more fortunate as well as happy, than in addressing myself to the judge. I have been betrayed, gentlemen, I hope, into no unseemly warmth; but yet into some warmth. I have felt myself like a man first put into hot water; but I have now been long enough in it to be perfectly cool. And, gentlemen, some small allowances might have been made for me by my judge who presides upon this cause, when he considers the peculiar disadvantages in which I stand here before him. Gentlemen, I am an absolute novice in these matters: and yet opposed to gentlemen, some of the most eminent in their profession, and some of the most conversant in practice. But that is not all; I have a farther disadvantage. I stand here, gentlemen, before you, a culprit as well as a pleader; personally and very materially interested in the issue of the cause which I have to defend. And every gentleman in the court must know (some perhaps by their own experience, all by the reason of the thing) how very different is the sportful

ful combat with foils from that which is seriously disputed with unbated swords; and how frequently the fluttering of the heart, in the latter situation, has been known to enfeeble the steadiest wrist, and to dazzle the clearest and most quick-sighted eye. Gentlemen, I have read even of counsel, eminent in their profession, conversant in practice, approved and applauded for their ingenuity in the defence of others, who, when they came to stand in the same situation in which I now stand, have complained to the court (and met with an indulgence which I have not); they have complained to the court of the same disadvantage which I now feel. Gentlemen, I have listened to Mr. Attorney-General's declamation with as much patience, and, I believe, with much more pleasure, than any one in the court. That pleasure I do acknowledge was personal to myself; arising from the futility of the support which Mr. Attorney-General has attempted to give to the serious charge which he has brought against me; a pleasure, however, mixed with some pain, when I consider the wretched times at which we are arrived; when a gentleman of his natural sagacity is, I own, justified by recent experience, for supposing it possible to obtain from a *London* jury a verdict for the crown, upon a mere common-place declamation against scandal and indecency in general, without one single syllable of reason, or law, or argument, applicable to that particular charge which he has brought against me, and which you are now upon your oaths to decide. Gentlemen, you know, as well as I do, that I am personally, and in all respects an absolute stranger to any one of you. I am glad of it. I do not expect or desire from you either friendship, or favour, or indulgence. It is your duty to do impartial justice, and I only request your attention. I began with requesting it; and I requested your attention, that you may be able

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to judge for yourselves, and that the verdict which you shall give (personally as it respects myself it is totally indifferent to me), but that the verdict which you shall give, may be really your own, as it ought to be, and not the judge's. That is the only thing I request of you, and I request it because it is your duty and your oath.

" Gentlemen, as for the charge that is brought against me, you cannot be ignorant that I am charged with the only unpardonable crime which can, at this time, be committed—I am accused of a libel.

" Murder and sodomy, you know, have in these our days often found successful solicitors; and the laws against popery (though unrepealed and in full legal force) are, when resorted to, thought, by the magistrate who presides here, too rigorous to be suffered to have their free course against a religion so destructive of the civil right of mankind, and so favorable to absolute and arbitrary power. But whilst that has been favored beyond the laws, nothing beyond the laws has been thought rigorous and severe enough against the charge of libel. Murder, attended with the most aggravating circumstances, has been repeatedly pardoned; and treason, the blackest treason, against the family on the throne, and (what is of much more consequence to us than *any* family) against the free constitution of this country, has been not only pardoned, but taken into favor; and the estates of convict traitors have been restored to them and their families. Whilst mercy and forgiveness, gentlemen, have been thus flowing unnaturally in a full stream over the highest mountains of iniquity, has any of you ever spied the smallest rivulet descending towards the valley of the libeller? Has any man charged with a libel (and what has not been charged as a libel?) has any man so charged ever yet met with mercy? Gentlemen, I do

do not call back again these things to your remembrance, in order to arraign them; that is not my present business; I only mention them to gain from you the only thing I wish, your attention. You will be pleased then, gentlemen, as one motive for your attention, to remember the nature of the crime charged.

" Gentlemen, if the nature of the crime and the rancour with which it is pursued, if that affords a strong reason for your particular caution and care and attention in this sort of trials, a much stronger reason indeed will be afforded you by the nature of the prosecution. It is called an information *ex officio*. The term *ex officio* is a very gentle expression for a very harsh thing. *Ex officio* (the gentleman well explained it to you, when he boasted of his conscience, and his integrity, and duty; for it is certainly so)—*ex officio* means, that which he does from a sense of duty. If in this you consider only just what meets the ear, there is no harm in it; it is a good thing: duty is a good thing. But if you examine the real force and consequence of the term, as here applied, you will find it to contain every thing that can be imagined illegal, unjust, wicked, and oppressive. For my own part, I am astonished that any man, at this time of day, exercising such powers as are not according to law, and are much less according to reason, should talk to you, with an open face, of integrity, of honour, of duty, of conscience; and that, instead of aggravating, and shewing you in what the charge which he has brought against me, in what my crime consists, he has employed half his harangue in boasting of his own character. If any man in the court, who had not known that I was the defendant, had come in at the time that that gentleman was talking of his integrity, his conscience, and his duty; I ask would he not immediately have concluded that Mr. Attorney-General was the

the defendant then making his defence? He must. Let the gentleman's integrity and honor be as great as he tells you it is; what has that to do with me? What has that to do with the charge which he has brought against me? except indeed this; that, having nothing really to charge me with, he sets up his own great immaculate character in opposition to mine; that you may give a verdict against me, because he is a man of honor, an uncorrupted man, a pure man of integrity, and would not charge me, if he did not think me guilty. Let him think what he pleases; if you do not think me guilty, I care very little what he professes to think. I know that he is manly enough; and I honor that part of his character. He bears a man's heart in his bosom, and (though his office has made him hold the language he does) I defy him not to respect me. I know he does. I am sure of it.

"Gentlemen, I said that *ex officio* contained every thing that was illegal, unjust, wicked, and oppressive; and I will prove it to you, *ex officio*—(a little specimen of it you have seen)—*ex officio* means a power to dispense with all the forms and proceedings of the courts of justice, with all those wise precautions which our laws have taken to prevent the innocent from being oppressed by exorbitant and unjust power.

"Gentlemen, I was thrown off my guard. I own I was. I had prepared an argument; which I believe his lordship perceived: he therefore granted me what I intended to have inforced: and, having granted it to me, that grant was made use of to prevent me from gaining any argument in answer, of any kind. You must have taken notice of it; it is your duty to take notice. Juries have been too much considered as men out of court; and when an application has been made to the judge, to determine upon a point of law, the jury has been considered

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as having nothing to do with the matter. No more they have, indeed, to decide it. But the jury has this to do with the matter: they are to make a true deliverance; and they will see and will judge whether the defendant has justice done him or not, even in the practice of the court. I know nothing of the law: I am not sorry for that: this is not a question of law; and I am happy to have Mr. Attorney-General's authority to say, that it is the 'plainest, the simplest question; and that it was too obvious for him to foresee a difficulty in it.' He said, it was the plainest of all the 'plain and simple matters that were ever laid before the court;' and being so, you are the best judges of it. And, indeed, the nature of a libel always makes a jury the best judges of it; for a libel (if it be so) is indeed for mischief: it must therefore be intelligible to the people, or no mischief could be produced by it. If a man writes a libel that a common jury could not understand, (and you are special jury, gentlemen,) he must fail in his design. Observe then, gentlemen, this advertisement is the plainest and simplest of all matters that were ever laid before a court in which the Attorney-General was concerned: and in these two years and a quarter that he has had to bring it to trial, he has not been able to see a difficulty in it; and yet he has had a *special* jury to determine it: a common jury could not be left to determine it: and that I will explain to you hereafter. I know very well, that not only juries, but many other persons, who apply even to the practice of the law, never trouble their heads to take into consideration altogether the enormous wickedness therefore, to explain it to you. You shall judge of the honor and integrity, and conscience, of the gentleman who use them and enjoy them.

"And, first of all, an information means no more than an accusation. Appeal, indictment, information, are, as

I think it (and I shall be corrected if I am wrong, it will be well corrected both by the Attorney-General and the judge)—I take it, they mean no more than accusation; and they have a different specific name, because of the different manner in which that accusation was brought forward. Then, gentlemen, this is an accusation by duty, or of duty; and by this means, by this his duty, the Attorney-General is enabled, contrary to the law of the land, to accuse whom he pleases, and what he pleases, and when he pleases. And (if he pleases) he could accuse them, and never bring it to trial: he goes on harassing the subject with information upon information, if he pleases, and never brings that man to trial. If, however, out of his mercy, or out of his resentment, he does chuse at last to bring it to a trial; why, gentlemen, he, in general, tries it by whom he pleases. Gentlemen, when it comes to trial, he tries it in what manner he pleases, he takes what advantages he pleases; and reason will be given for those advantages. Gentlemen, during the source and progress of the trial, if, notwithstanding those advantages he has already taken, he sees some reason to suspect that the verdict is likely to go againſt him, he claims a right to stop it if he pleases, without any decision; for he claims a right to withdraw a juror, as it is called; that is to say, you shall not come on to a verdict. The Attorney-General must not deny it, unless indeed the practice of the court is changed in that particular.

"The practice of the court, we see, does sometimes change; for I have it now from the judge, that in all cases the prosecutor has a right to reply; which truly I did not before think to be the practice; but, however, the bar will take notice now; for they will soon have cases in which they may enjoy that benefit and privilege, if it

be one: the prosecutor has a right to reply, even though no evidence is called for the defendant.—I shall see more new methods of proceeding in trials; I have seen a good many. I think there must be somewhere or other in the court a gentleman with spirit enough;—some gentleman or other—many I hope there are, who will (upon trial, where they may be prosecutors)—who will take that advantage that has been allowed to day, and will offer to reply where no evidence is called. There were some half words, I know, dropped about *matter of law*, but I hope that will be made plain.

"Well, but if the Attorney-General does not stop the cause without coming to a decision, but think he shall get a verdict, he suffers none of those displeasing consequences which other men must suffer, for the crown pay no cost—none at all—he can prosecute as often as he pleases, and whom he pleases, and pay no costs! But that is not all.—Suppose he has convicted six, seven, or eight men for the same offence, he exercises the sovereign power of pardon; he calls to judgment which of them he pleases, and lets go which of them he pleases. —It happened in the prosecution of this very paper:—out of several convicts, but three of them have been given up to judgment. That in some part I shall explain to you. But that is not all: the man or the men whom he calls up to judgment, he, *the prosecutor*, aggravates their punishment as he pleases, and that I will prove to you. In that, I think, I shall not be contradicted, because I have the authority of the judge who is now trying this cause.

"So that in every stage of the business, you will find that there is an unjust, an illegal, a wicked, and an oppressive advantage. And that you may not think that I am declaiming without any proofs, I will so far tres-

pass upon your time as to come a little more to particulars.

"And first, gentlemen, for the beginning of such a prosecution.—He brings it on as he pleases; he has no resort to a grand jury, or the country to accuse; but, contrary to express law, and what is much stranger, contrary to the strongest and the very fundamental reason of that law, he has no recourse at all to a grand jury; and that because it is the pretended suit of the crown. Now, gentlemen, if we want to inquire (which is not often done, I know, in courts of justice) why any grand jury? Why a grand jury at all? It is not owing to the nature of the offence; grand juries are in capital offences and in small offences. Why are a grand jury to find the offences? For you must not be led away by technical terms. Information, appeal, and indictment, all mean one and the same thing;—accusations brought by different persons—that is the only reason of their different appellations.—If that is not the reason of the difference of the names, I shall be corrected.

"Then why a grand jury? I would tell you in my own words, if I had not the words of a person more to be relied upon. Sir *John Hawles* says, these are his words: the true reason of a grand jury.

"But, gentlemen, I shall just obviate an objection first, because I shall not have an opportunity after it is made. It may be objected, that I have taken this from the *State Trials*, and I have heard from the bench that the *State Trials* are no authority. I have also heard from an officer very high in the law, and of very great acknowledged abilities, who sits by the side of the Attorney-General, that they are a much better authority (I speak it because I heard him say so)—that they are a much better authority

thority than the scrawl of a nameless reporter. But I will tell you why the *State Trials* in certain cases are the best authority; and that is for this reason; because they are equally good authority, whether what they relate is true or is false. It is a strange assertion, but their authority is equally good for the purpose for which they are brought, whether the things they tell are true or false. I have heard them called from the bench (and called so for very good reasons) 'libels upon the judges.'—The *State Trials* are so far from being an authority, that they are libels upon the judges;—Are they so? Then they are still better authority than if they were true; that is, authority for the purpose for which they are brought; that is, for the condemnation of the wicked doctrines which they expose. For, are they libels upon the judges? Was it the intention of those who wrote them to blacken their characters? Would the libellers then at that time of day (some a hundred, two, or three hundred years back, or according to the length of time), would an enemy have put into the judge's mouth doctrines which were honourable? No; if he intended to libel them, he has falsely made them the propagators of those doctrines which their souls abhorred. Can there be a stronger evidence about the opinion which men had formerly concerning these doctrines? If there cannot, then there can be no stronger authority against the doctrines exposed by the *State Trials*. True or false, the *State Trials* are the best authority which can be had; and better if they are false than if true.

"Then, gentlemen, I will proceed to my authority: 'The true reason of a grand jury is the vast inequality of the plaintiff and defendant; and therefore the law has given this privilege to the defendant on purpose, if it were possible, to make them equal in the prosecution and defence, that equal justice may be done between both. It

considers that the judges, the witnesses, and the jury, are more likely to be influenced by the king than by the defendant: the judges, as having been made by him, and as it is in his power to prefer or reward them higher: and though there are no *just* causes for them to strain the law, yet there are *such* causes which, in all ages, have taken place, and probably always will. Nor was it, nor is it possible, but that the great power of enriching, honoring, and rewarding, lodged in the king, always had and yet must have an influence on the witnesses and jury; and therefore it is that the law has ordered that at the king's prosecution no man shall be *criminally* questioned'—(this is a criminal question)—'no man shall be criminally questioned, unless a grand jury, upon their own knowledge, or upon the evidence given them, shall give a verdict that they really believe the accusation is true.'

"If, gentlemen, there are *other* reasons for a grand jury than these, if there are *others*, you will have them; and though it will not be permitted to me to do, (what with the utmost extent of my ignorance of the law which is very great, I am still sure I could do by common sense and reason—I mean refute those other reasons;) I say, though I shall not be permitted to do that here, you and all the world will be able, at your cooler hours, to determine upon the force of those reasons that shall be given, from whatever authority they may come. And in this respect I shall be happy; for I shall have the honesty and the understanding of the public at large to judge of those doctrines which my imbecility might not permit me sufficiently to refute.

"Gentlemen, it is true that the court of *King's Bench* has also assumed a power of accusing men; they say, they may safely be trusted with it. I believe their claim illegal; but I have nothing to do with it: and I acknowledge

ledge that it is much safer *there*, than in the hands of the Attorney-General, who is whipped in and whipped out just as the minister, whose friend he is, goes in or out.

" But that is not all. The court of *King's Bench* cannot grant an information without an affidavit, without an accusation upon oath; no one of the judges of the court of *King's Bench* can do it; and yet they are a little more independent (they have fewer hopes, and therefore fewer fears) than the Attorney-General; yet no *one* of the court can accuse a man, it must be the *whole* court, and they must do it in conseqûence of an oath. If I am wrong, you will have the pleasure of contradicting it (turning to the Attorney-General). But the Attorney-General accuses men neither upon the oath of others, nor yet upon his own oath. If he believes the matter of the accusation true, it is but the belief of one man, and he a prejudiced man, and the moſt improper man in the kingdom for his authority to be taken in such a case. But, gentlemen, what is much worse, it frequently happens that no man whatever avows the accusation, or believes it; no, not the Attorney-General himself, who files the information. I will prove it by-and-by, even in the case of the Attorney-General, who filed this declaration. Gentlemen, I shall desire by-and-by, for your satisfaction and mine, to find out whether there is *one* man in the country that believes me guilty of the crime laid to my charge; a crime of that nature that is to have a punishment which is called by the law a temporary death, an exclusion from society, imprisonment. The apparent object of this prosecution is to take what little money out of my pocket I may have there, and to imprison me, and to exclude me from that society of which I have rendered myself unworthy. However, I have the pleasure to see there sits a gentleman by

the judge who is now trying me, who, as well as myself, has charged the king's troops with murder; a charge which at that time excited great abhorrence and detestation against him. The judge and that gentleman have been laughing all the time of this trial; they have enjoyed each other's company exceedingly (*a great laugh for some minutes of the whole audience*). Well, gentlemen, (turning towards lord Mansfield and Mr. Wilkes) I have caused another laugh between the gentlemen; but it gives me pleasure to think, that if ever I am to come out of prison again (if you are so kind as to put me there), I too may have the honour (if it be one) of sitting cheek by cheek with the judge, and laugh at some other libeller. I said, if I come out again—because if it is possible that I should be put there for this charge, I believe that will never happen.—I will never cease repeating the charge I have made, till those men are legally tried and acquitted who are guilty of what I call murder. I will not be contented with one, nor with two, nor with twenty juries. I will repeat the charge of murder upon the troops every day, if this doctrine gets so far even as to a doubt; and call upon the Attorney-General now, if he may, if he can, if he will venture without the permission of those ministers whose humble servant alone he is; if he may venture, I call upon him to pledge himself to bring an information for a seditious libel against the king and the government every time I charge the troops with murder. I promise him I will give him business enough, and I hope he will (if he may venture to do it) promise to file an information every time I charge them with murder when they commit it.

"But, gentlemen, I have wandered; though, if I am to be shut up so soon, a few excursions before it may be excused me.

"The

"The Attorney-General does not apply them to the grand jury, and there is no person whose accusation upon oath it is.

"When he has filed his information, he proceeds or not upon it as he pleases; he files fresh informations if he pleases, when he pleases, as often as he pleases; he uses it if he please as a vexatious method which may harass and ruin the greatest fortune in this country. It has been used vexatiously. I do not say by the present Attorney-General; I do absolutely acquit him of that; he never, that I know of, has been guilty of that practice: but I do know Attorney-Generals who have; but that I may not seem to libel all the world, I will not mention them, nor the case. When the Attorney-General has brought his accusation, and renewed and delayed it as much as he pleases, if he chuses to try it; I said, he tries it by whom he pleases. It may seem perhaps a strange thing for me to say to a jury who are trying my cause; but it is a fact; for he is always sure to have a *special* jury for the trial of this sort of charge. Libel is always tried by a *special* jury. Now this seems a very comical thing, for there is an expence attending it. The gentlemen, I suppose, would not be thought to be unnecessary lavish of the income of the crown, which has lately been found so deficient; he surely would not voluntarily throw it away. And yet a man that came from *Brentford* (my clerk formerly) had two guineas for his expences. He is a very honest man; it was a very lucky matter for him; I wish, for his sake, that he might be called as a witness against me once a week upon such a prosecution. Now if the ground of the charge happens to be, as this is, 'of all plain and simple matters that ever were laid before a court the most simple;' it is a very

strange circumstance, that the Attorney-General should chuse to have a special jury to try a thing in which there is nothing *special!* *Special* juries were never intended or appointed for the purpose. They were intended to examine into merchants' accounts, or any critical or nice matter; for you know we are told that you have nothing to do with the law: you do not therefore want legal education; and yet *special* juries are always made use of in matters of libel. And indeed why should they not? It costs the Attorney-General nothing. In the case of any other prosecutor, it would be at his expence; but the crown pays this, that is, the people pay it against themselves. However, that is no objection to Mr. Attorney-General; for if you look at the law-expences in the civil list of the last year, 1776, as they are delivered into parliament, you will find that amount to the little insignificant sum of 60,000*l.* A defendant against the crown is in a blessed situation. But as the expence is no reason against the Attorney-General chusing to try it by a special jury; and that is, because, by that means, he tries it by almost whom he pleases: I do not mean by the particular individuals whom he pleases, but generally by that description of men that he pleases. Now this, gentlemen, is particularly unfortunate in my case; for the Attorney-General said (I heard him say it upon the first trials for this advertisement), that nine-tenths of the people approve of all the measures of the ministry relative to America. The method of striking a special jury seems at first sight fair enough. Forty-eight men are struck from a book. The defendant and the prosecutor each strikes off twelve. That seems very fair and just; but it is very far from being so fair; for if nine-tenths of the people (which he himself acknowledged) are of that way

of

of thinking, (a way of thinking contrary to what I may well seem to be,) you will observe, that the Attorney-General strikes off two-tenths and half a tenth out of the forty-eight; so that he will be sure not to have one man of my way of thinking concerning *America:* I mean, it will be so, if at least they know what they are about; so that you see there is sure to be a little prejudice against the defendant in the minds of the jury. It is true, indeed, that the opinion of the jury concerning the measures relative to *America* has nothing fairly to do in this cause; but the prejudice may be extended from one thing to the other. We all know very well how men's minds are apt to run. But that is not all. This prejudice will be the case, even though the special jury are fairly struck; but they are not fairly struck. I believed so; but I never was sure of it till this case of mine: and whatever I may suffer, I think it a cheap purchase to know what I now know by this means. The special juries in this country, especially in *Middlesex*, great numbers of them are qualified by the crown; they are esquired by the crown; and these crown esquires always attended upon the special juries. In the city, gentlemen, to which you belong, you know very well whether the description of merchants has or has not changed within some years past. You know, I dare say many of you, what merchants *were*—what merchants *are*. You all know well that the very numerous and extensive contracts which are going forward, bring a swarm of merchants in amongst you. Every man that has a contract becomes a merchant; every man that has a contract is liable to be struck upon a special jury, and he is sure to attend, if he is taken: and you must observe besides, that the solicitor of the treasury, who is in this constant employ of striking special juries, knows all the men, their sentiments,

ments, their situations, their descriptions, and the distinction of men.

" Now, gentlemen, for the method of striking a special jury, which I shall not wonder that you are not acquainted with; and for the counsel, it is a matter that they are not concerned in. Observe, I do not lay these things to the charge of the Attorney-General; he only uses the powers which others put into his hands. The special jury, you may imagine, are taken indifferently, and as it may happen, from a book containing all the names of those who are liable to serve. I thought so, when I read the act of parliament, appointing the manner in which they should be taken; but when I came to attend to strike the special jury, a book with names was produced by the sheriff's officer. I made what I thought an unexceptionable proposal: I desired the master of the *crown-office* (whom I do entirely acquit, and do not mean the slightest charge upon), I desired the master of the crown-office that he would be pleased to take that book; open it where he would, begin where he would, at the top or at the bottom; and only take the first forty-eight names that came. I said, I hoped that to such a proposal the solicitor of the treasury could have nothing to object. I was mistaken, he had something to object. He thought that not a fair way (*turning round to the Attorney-General*). There were witnesses enough present; and I should surely be ashamed to misrepresent what eight or nine people were present at. He thought that not a fair way. He thought and proposed as the fairest way, that two should be taken out of every leaf. That I objected to. I called that picking, and not striking the jury. To what end or purpose does the law permit the parties to attend, if two are to be taken by the master of the crown-office out of every leaf? Why then

hen need I attend? Two may as well be picked in my presence as in my absence. I objected to that method. The master of the crown-office did not seem to think that I had proposed any thing unreasonable. He began to take the names, but objected that he could not take the first forty-eight that came, because they were not all special jury-men; and that the names of the common and special jury-men were mixed together, and that it would be a hard case that the party should pay the expence of a special jury and not to have one; that they were expected to be persons of a superior rank to common jury-men. I could have no objection to that, provided they were indifferently taken. I said, take then the first forty-eight special jury-men that come. He seemed to me that he meant to do it. He began; but as I looked over the book, I desired him to inform me how I should know whether he did take the first forty-eight special jury-men that came, or not; and what mark, or description, or qualification, there was in the book, to distinguish a *special* from a common jury-man? He told me, to my great surprize, (and he said he supposed I should wonder at it,) that there was no rule by which he took them. Why then, how can I judge? You must go by some method. What is your method? At last the method was this: that when he came to a man a woollen-draper, silver-smith, a merchant, (if merchant was opposite to his name, of course he was a special jury-man,) but a woollen-draper, a silver-smith, &c. he said there were persons who were working men of those trades, and there were others in a situation of life fit to be taken. How then did he distinguish? No otherwise than this: if he personally knew them to be men in reputable circumstances, he said, he took them; if he did not know them, he

he passed them by. Now, gentlemen, what follows from this?

"But this is not all. The sheriff's officer stands by, the solicitor of the treasury, his clerk, and so forth; and whilst the names are taken, if a name (for they know their distinction) if a name which they do not like occurs and turns up, the sheriff's officer says, 'O, sir, he is dead.' The defendant, who does not know all the world, and cannot know all the names in that book, does not desire a dead man for his jury-man. 'Sir, that man has retired.' 'That man does not live any longer where he did.' 'Sir, that man is too old.' 'Sir, this man has failed, and become a bankrupt.' 'Sir, this man will not attend.' 'O (it is said very reasonably) let us have men that will attend, otherwise the purpose of a special jury is defeated.' It seemed very extraordinary to me: I wrote down the names, and two of them which the officer objected to I *saved*. I begged him not to kill men thus without remorse, as they have done in *America*, merely because he understood them to be friends to liberty; that it was very true, we shall see them alive again next week, and happy; but let them be alive to this cause. The first name I took notice of, was Mr. *Sainsbury*, a tobacconist on Ludgate-hill. The sheriff's officer said he had been dead seven months. That struck me. I am a snuff-taker, and buy my snuff at his shop; therefore I know Mr. *Sainsbury* was not so long dead. I asked him strictly if he was sure Mr. Sainsbury was dead, and how long had he been dead? 'Six or seven months:' Why, I read his name to-day; he must then be dead within a day or two, for I saw in the newspapers that Mr. Sainsbury was appointed by the city of London one of the committee, (it happened to be the very same

same day) to receive the toll of the Thames navigation: and as the city of London does not often appoint dead men for these purposes, I concluded that the sheriff's officer was mistaken; and Mr. *Sainsbury* was permitted to be put down amongst you, gentlemen, appointed for the special jury.

"Another gentleman was a Mr. Territ; the book said he lived, I think, in *Puddle-dock*. The sheriff's officer said, 'that gentleman was retired; he has gone into the country; he did not live in town.' It is true, he does (as I am told) frequently go into the country, (for I inquired.) His name was likewise admitted, with some struggle. Now what followed? This dead man and this retired man were both struck out by the solicitor of the treasury; the very men whom the sheriff's officer had killed and sent into the country were struck out, and not admitted to be of the jury. Now, gentlemen, what does that look like? There were many other names of men that were dead, and had retired, which were left out.

"There is something more unfortunate in the case of a special jury. The special jury-men, if they fail to attend that trial for which they are appointed, are never censured, fined, or punished by the judge. In the trial of one of the printers, only four of the special jury attended. This is kind in the chief justice, but it has a a very unkind consequence to the defendant, especially in a trial of this nature; for I will tell you what the consequence is. The best men and the worst men are sure to attend upon a special jury, where the crown is concerned; the best men, from a nice sense of their duty; the worst men, from the sense of their interest. The best men are known by the solicitor of the treasury: such

such a one cannot be in above one or two verdicts; he tries no more causes for the crown. There is a good sort of a man, who is indeed the most proper to try all this kind of causes; an impartial, moderate, prudent man, who meddles with no opinions. That man will not attend; for why should he get into a scrape? He need not attend; he is sure not to be censured; why should he attend? The consequence follows, that frequently only four or five men attend, and those such as particularly ought not to attend in a crown cause. I do not say that it happens now. Not that I care: I do not mean to coax you, gentlemen: I have nothing to fear. You have more to fear in the verdict than I have, because your consciences are at stake in the verdict. I will do *my* duty, not for the sake of the verdict. Now, what follows this permission to special jury-men to attend or not, as they like best? Why, every man that is gaping for a contract, or who has one, is sure to shew his eagerness or zeal. It happened so in the trial of the first cause for this advertisement. The printer shewed me the list. Amongst them, one of the first I observed was Sir *James Esdaile*, alderman of *London*, and a contractor for the army. (There were several others; I do not mention the gentlemen's names.) He would have struck him out. I said, no; there are so many bad that ought to be struck out, leave in Sir *James*: it is impossible that a magistrate of *London!* with so much business; a contractor under the crown! if he has any modesty he cannot, an alderman of *London!* go down to be a special jury-man in *Middlesex*. He was the foreman of the jury. He was sure to attend. And so they got the first verdict, in order to give them this influence upon men's minds—'We have got a verdict.' This question has been determined by a jury.

"Well,

"Well, gentlemen, having then got such a special jury as he usually does get, (for it seldom happens that twelve gentlemen have sense enough of their duty to attend, as happens to be now my case,) the Attorney-General brings on the trial. He then claims, amongst other things, *a right to reply*, though no evidence is called for the defendant. You have heard what passed upon this subject with the judge. I will leave that matter now, though I think I have enough to say upon it; however, I will leave it unexamined now: I hope to live to argue that point for my client, and therefore will not trouble you now with that argument. You will yourselves judge whether any reason was given me, or to you, or to any man, why the Attorney-General, prosecuting for the crown, having all the influence, power, and advantage that he can possibly have, why he should have the advantage of reply—which my equal or inferior shall not have!

"But besides this, I told you before, that he claims a right of stopping it, when he pleases, *by withdrawing a juror*. I should be glad to hear that contradicted and given up. But further, if he loses the verdict he *pays no costs:* the crown pays no costs. The miserable man that is harassed, even though innocent, though gaining a verdict under all these advantages, (if it is possible, and which seldom happens) yet still he must stand by his costs; and they may be, you see, whatever they please to make them.—Again, if the Attorney-General gains a verdict, he punishes whom he pleases, and when he pleases. I think that there were eight convictions for this advertisement, yet but three have been called up to judgment. One, I think, was let off, because there was a little false-swearing in the case, by an officer under the crown—(I allow it to have been certainly a mistake,

because he is a gentleman of character) and therefore it is accounted for how this one got off; but how the other printers escaped, whether from the benevolence of the Attorney-General, I do not know.

"That is not all. He aggravates the punishment of the person against whom he gets the verdict, if he pleases. I was present in court when I heard the judge who now tries me, (and who will perhaps give the same intelligence in my case) tell the Attorney-General of that time (who is now chief justice of the *Common Pleas*), when he moved that the convict, (who was the gentleman who now sits next the judge) when the Attorney-General moved, that Mr. *Wilkes* might be committed to the *King's Bench* prison, Lord *Mansfield* instantly said to Mr. *De Grey*:— 'The king's Attorney-General may choose his prison: all the prisons are the king's. The Attorney-General may, if he pleases, move to have him sent to *Newgate*.' His lordship mentioned *Newgate*: I heard it. And observe, this was an instruction to the Attorney-General, who surely, of all men in the world, least needs instruction: and it was in a case where he was prosecutor; and in a criminal matter, and prosecutor too for the crown. And this instruction was not in order to obtain justice against the offender; that was past, he had been convicted may years before; but it was merely in aggravation of punishment: I did not know nor believe, that the Attorney-General had that right. I should not have known it, if I had not learned it from so great an authority.

"Gentlemen, having rehearsed what these claims are, I entreat you to consider *who* it is that enjoys these powers; superior to the powers which any one judge in this country enjoys, superior even to the powers which even the courts enjoy. It is the Attorney-General: Now,

Now, who is the Attorney-General? Who is he? Whose officer is he? What sort of officer is he? I will tell you what a *Scotch* author of merit—(this is not law, but is very good reason and great truth) I will tell you what he says of the office of the Attorney-General. What I say now, gentlemen, does not go against the person now intrusted with it; it goes against his office. I do not speak of this gentleman particularly; all Attorney-Generals, at least most of them (some of them indeed would not, but most of them will) use these unjust powers. *Mallet* says, in the preface to his life of Lord Chancellor *Bacon*; 'The offices of Attorney and Solicitor-General have been rocks upon which many aspiring lawyers have made shipwrecks of their virtue, and human nature. Some of these gentlemen have acted at the bar, as if they thought themselves, *by the duty* of their places, (that is, *ex officio*) absolved from all the obligation of truth, honor, and decency—(but not absolved you find, from *talking* of them,) but their names (he says) are upon record, and will be transmitted to after-ages, with whose characters of reproach and abhorrence that are due to—(to whom? This man is as unfortunate in his style as myself,) the worst sort of *murderers*, those that *murder* under the sanction of justice.'—He was never prosecuted for it. He charged the office of Attorney-General (which is something more respectable than the office of a common soldier) with being the worst of *murderers*.

"But the Attorney-General, it is said, is chosen by the king; that is what is pretended. He is the king's officer, but he holds it by a very precarious tenure; his future hopes are greater than any man in this country; his fears therefore must be in proportion. Observe too, he enjoys these powers on the behalf of the king, against

whom, particularly, all those precautions were taken; for these precautions are not taken between subjects who are upon a footing; but all those precautions and advantages for innocence (that it may not be oppressed) they are all taken, not against the king, but against the crown, against that power which is more often abused than any other power; more liable to be abused, because greatest. But, gentlemen, the matter is a great deal worse than this. He is not the king's officer; he knows better where his obligations lie; he is not so ungrateful; he would not, at a table with his friends, say that he is a *king's* officer; he knows a great deal better than that. He is in truth the officer of the minister: and if the minister goes out to-morrow, out goes the Attorney-General. We cannot possibly have a stronger instance and a happier fame of this very thing. There sits here in court a gentleman who should have been Attorney-General, (he lost not the place, I suppose, for want of abilities,) who refused a brief in this very cause; because he thought it scandalous at the distance of two years and a quarter. I suppose he might have still stronger reasons. If I knew them, I would use them. If I knew *his* reasons why he thought this prosecution scandalous, you would hear a very different defence from any which I can give you. Put in then another minister, and the Attorney-General thinks me a very honest man; but if there comes a different minister and a different Attorney-General.—' O, put him out of the world, he is not fit for human society; put him out like a mad dog.' You see it is not the king's officer, it is the minister's officer.

" Gentlemen, it is very well known, that Attorney and Solicitor-Generals make a considerable part of every administration.

administration. They sit there in the house of commons on each side of the minister; the two brazen pillars, the *Jachin* and *Boaz* of the minister in the house of commons. However, gentlemen, though this situation of theirs may make us smile, it is a very serious thing, especially when their honor and conscience are to go to you for proof and instead of argument.

" Now let us see, how have those powers been exercised? I have shewn you what they are. I have shewn you who enjoys them: now let us see how they have used them; I mean the present Attorney-General. I will not go back to tell you that the bishops were reckoned guilty of a libel, not because they opposed the introduction of the popish religion; but because they would not lend their own hands to the introduction of it. But how has it been used by the present Attorney-General? I am driven to this inquiry. He has talked much of his conscience, and if he had not imagined that he was executing his duty, he never should have thought of the prosecution: he did not know me; it was merely a matter of duty. Now, I did not apprehend that it was a matter of his stirring, and that his motive was duty, but as he takes it upon himself, upon himself it must be. Now therefore, how has he exercised this power which he enjoys in right of being the king's officer? I say, that he has then equally betrayed his own conscience, and the dignity and prerogative of the crown, (if injustice must pass by these names.) I say that he has betrayed them all, for he has acted, not as the Attorney-General of the king, but as the Attorney-General of the house of commons. Never before this gentleman's time did any house of commons, I believe, I am sure, never did they direct any Attorney-General to file an information. Who enjoys the power then? The house of commons files infor-

mations! Worse still, the Attorney-General files informations, not from his own mere motion, not from the direction of the crown, but by the direction of the most corrupt assembly of men that ever existed upon the face of the earth. It may be called indecent to call them so; but, gentlemen, I know, that if every man was to speak but one word expressive of his opinion concerning what I say, there are those, perhaps within hearing, whose hearts would sink within them. There is no man doubts it, and I shall not be afraid to say it. But, gentlemen, now observe: this officer, the Attorney-General, was never permitted to have a seat in the house of commons, till the time of Sir *Francis Bacon*. He is no officer of the house of commons; he never was permitted to sit there till that time; and out of the extreme veneration which they paid to the greatest of mankind, (for he was so) they permitted him for the first time, to have a seat as a private member in the house. Now, where have we got? He has no longer a seat in the house as a private member, he is the officer of the house of commons; that power which is pretended to be exercised for the crown is exercised for the minister. The house of commons is the minister's; for he would not be minister, if he had not a majority. The Attorney-General is brought in by him, the house directs the prosecution: whereas the method formerly was, that the house of commons used to address the crown, to desire the crown to order the Attorney-General to file an information or to prosecute. Never till this time did the house think of directing the king's officer to file an information. The consequence happened to be, what at the very time it was natural to foresee would happen. The Attorney-General prosecuted men whom he thought to be innocent. I happened by stealth, (I am not often permitted to be there)

there) I happened by stealth to hear this gentleman in the house of commons speak a language which no man could mistake. What is still more, on one of the prosecutions brought, the vote for it was either rescinded, or some healing vote was afterwards put into the journals of the house of commons, for having caused a prosecution to be brought against a person who was found to be innocent. Here is a dangerous power indeed! who may not, if this is permitted, file an information against the subject? What a power is this in the hands of a minister to ruin! for if I am not ruined, it is the gentleman's mercy. I thank him for *that* mercy, for he might every term file an information, if he pleases.

"Now, gentlemen, consider in what sort of a charge does he enjoy these extraordinary powers. You will find, that as he is the last man in the world (I speak not of the man but the office) that ought to be trusted with these powers, so he enjoys them in that kind of charge in which he should least of all enjoy them. For, gentlemen, *libel*, as well as *Attorney-General*, depends very much upon the minister. Why, don't we all know very well, that they who were *pilloried* for a libel in the last reign are *pensioned* in this. What then, is this the kind of charge in which this open door to oppression should be left to the Attorney-General and to the minister? It is not for the crimes against the state that this power interferes, but for partial political opinions; and the man who is pilloried or imprisoned to-day, may, for the same act, be pensioned to-morrow, just as the hands change. If this party goes down it is libel, if it comes up it is merit. Is it in this kind of charge that an Attorney-General should employ all these unjust powers? I need not bid you consider and recollect what sort of things have

been charges as libels; there is nothing that has been so charged. Sermons, petitions, books against plays—saying that money will corrupt men, nothing but barely mentioning the effects of money—all have been prosecuted, and punished, and ears cut off, and those things, for libels. In short, gentlemen, you will always find (your memories will go back enough to find it without reading,) that whatever is contrary to the inclinations, interests, or even the vices of a minister, has always been, and ever will be, charged as libels. Even in this time, if the Attorney-General's friend, Mr. *Rigby*, had been Attorney-General, or to direct the Attorney-General to file informations for libels, the present speaker of the house of commons would have been accused of a libel, for recommending economy to the crown. We know that he would, and there is nothing extraordinary, that a speaker of the house of commons should have an information *ex officio* filed against him for a libel. The speaker, *Williams*, had one filed against him for publishing the journals of the house. They are now wiser; indeed the case has been scouted.

"If then, gentlemen, these considerations should make you careful and attentive in a trial upon a prosecution of this kind; the frequency of prosecution for libels, I suppose, should add to your care and attention. For, gentlemen, when is it that libels are most frequent? Have they been under the best governments, under the best administrations, (for government is a word abused) I mean under the ministers. Have they been under the best, or always under the worst? It is only bad men that will accuse the good; good men don't accuse good things; notwithstanding which, you will find that under the best administrations there are few libels, and much fewer prosecutions;

prosecutions; and under the worst administrations you will always find them swarm. Whether it happens, that under the worst administrations (for there is always folly with wickedness) the minister is so foolish; as that, not attending to the principles of the person recommended to him, he, by mistake, chooses a good Attorney-General, who has skill to discover, and honesty to pursue those crimes which are detrimental to society; or whether it happens, that a good minister chooses a bad Attorney-General, who has no honor or understanding to care for, or to discover their evil tendency, and therefore does not prosecute at all—but it so happens, that under a good minister there are no prosecutions for libel, under a bad minister you meet with else where.

"Gentlemen, if the general nature of this kind of prosecution calls for your particular attention, the particular unfairness of *this* prosecution more strongly demands it. Gentlemen, you will be pleased to remember, that the advertisement which is now brought before you, was published on the 9th of *June*, 1778. Observe, too, what is the charge. Not any harm that it has done, no, but only a *tendency*. The charge of the libel is a *tendency* to excite sedition; a tendency to alienate the minds of his majesty's subjects; a tendency to do a great many other bad things: I do not recollect them, nor care about them. What! come two years and a quarter afterwards to prosecute for a *tendency* (not actual mischief, but a *tendency*) to mischief. It was so dangerous a thing, that it was suffered to rage and have its full influence without any check, or control, and then two years after (when its tendency must long since have ceased) comes the prosecution to check the *tendency!* I believe no grand jury would have found a bill for this prosecution at this

distance of time: nay, I believe that *all* the judges of the *King's Bench* would not have done it. The Attorney-General was well aware of this objection upon the trial of the first printer. 'Why not?' said the Attorney-General, 'will folly say, that that which was a crime in 1775 is no crime in 1777?' Will folly say? Why what will not folly say? Folly will say any thing: and what wonder? When even a man of his natural good understanding, if placed in his peculiar situation, is often obliged to say, what a moderate folly would blush at. 'Was it a crime,' say he, 'two years ago, and is it no crime now?' That is not the question; but whether it should be prosecuted now, after two years delay? That was the question which he should have spoken to. And would that be thought so ridiculous a position to be heard in a court of common law? You all know very well, that a simple contract debt cannot be recovered after six years is suffered to elapse. Now, will folly say of that money, and the benefits of it which a man has enjoyed for six years; was it a debt six years ago, and is it no debt now? No; no man will pretend that the debt is not accumulated. But what then? If you have suffered that time to pass by, you shall not sue for it now; so the unjust possession of an estate for forty or sixty years, (according to the rules which the courts have laid down) the unjust possession of an estate quiets the possession. What then, does it become just? Have I robbed another family for so many years; retained the principal and the income; and does it now become just? No, but you shall not recover; the door is shut against your suit. Appeals for felony, for rape, and for murder, they must be brought within a year and a day. If you let slip that year, you shall not prosecute. What! does it cease to be

felony? Does it cease to be rape? Does it cease to be murder? No, there never was such folly that said that; no folly ever said it: but the law says, you shall not prosecute: you have lost your time. But there is still a stronger circumstance concerning this doctrine, which I love best, because it came from the gentleman himself. The estate of a man, the most obnoxious for the blackest treason, by an act of parliament, was proposed to be restored to the son. I rejoice that he has it: but the argument of this very gentleman was, that—'oblivion ought to pass over it, it was treason, to be sure, but it was twenty years ago.' Good God! if twenty years shall prescribe against treason, or silence, or put oblivion upon it; if forty years possession, for a large landed estate; if six years, for a simple contract debt; if one year, for appeal in cases of rape, felony, or murder, what shall not the mere tendency—(not actual mischief), but the mere tendency of an insignificant libel in a newspaper; (if it was a libel, but it is not,) what, shall not that be permitted a two years' prescription? I shall have others besides folly, I believe, think with me in this question.

"But, gentlemen, whether it shall be prosecuted or not, the hardship is equal to me. I do not say, that it is absolute law that it should not be prosecuted; for this has never been adjudged: indeed the case has never happened before. The Attorney-General has produced no precedent of such a prosecution as this; he can produce none to you. But I desire the Attorney-General to remember what I now say to you and to the court: I say, that this abuse of his power and prerogative, and of his unjust claims, will cause some method of quieting men in respect of libels, as men have been quieted in respect of possessions against the crown. It will be necessary, for it will be considered

considered that the nature and the effects of the charge of *libel* have been very considerably changed in the present time. The charge of libel now affects both houses of parliament. Privilege is gone, expulsion may be the consequence, incapacitation follows! To what are they exposed: I cast my eyes by accident toward one.—I beg the gentleman's pardon—there sits near the judge one of the most distinguished members of the house of commons; he is as liable to an information for a libel as I am at this minute.—In his book the charge of *murder* is as completely made as in my advertisement: it is *lately* published in his *Letter to the Freemen of Bristol:* he stands as liable to be expelled, to be punished, to be shut up from society as a mad dog as I do, and with the same pretence. Gentlemen, there are now great officers of state whom I know to be more liable to a prosecution for a libel than I am, who have written what has much more the aspect of a libel, than any thing to be found in my advertisement; and which may be proved against them by the same man that has proved my publication. It is true, those who are not concerned in *Gazette*, may at present have left off the practice: but what signifies that? The Attorney-General will tell them, that the number of years signifies nothing: it is folly only that will say that, even though it was written ten or twenty years ago (for he has drawn no line) it is only folly that will say, it is not a crime now, if it was a crime then.

"Gentlemen, I must beg you particularly, for your own direction, to observe the strong reasons against this practice of bringing a prosecution for a libel, long after the cause of the charge was given. Consider the changes which are made both on the persons charged, and the appearance of change which there may be in the thing charged. A man hereafter to be charged with an offence

so uncertain as libel, may, thinking himself in perfect security, change his situation; which he would not have done, if he had known that there was a prosecution for libel hanging over his head: and perhaps the Attorney-General would not have brought that prosecution, if he had not changed his situation, and hereby made himself vulnerable, who was not so before. Why, a man might have had a wife or children since the publication of this libel, and it is known that to have them is called—'giving hostages to fortune.'—A man might have given hostages to fortune, and then comes a vindictive Attorney-General and drags him away from his peaceful family and fire side, drags him away for a libel written ten years ago: for he has drawn no time! Is this to be borne? Is this to be suffered? I thank God, that is not my situation. There is, however, a change in *my* situation; but of that I shall say nothing; though I firmly believe, that that change in my situation caused this prosecution: and you yourselves shall consider. It is now two years and a month ago, or thereabouts, upwards of two years ago, that this advertisement was published. They were very sore at it, it was considered as an affront by those that were glad that the men were killed. However, of them I knew nothing; I have not accused them. A prosecution was soon after commenced against the printer, who has here been evidence against me, and it stopped: he heard no more of it; it went fast to sleep, and was taken up again. When? Immediately after it was known *somewhere*, that I had (after an interval of twenty years) entered again into commons at the *Temple*, in order to do that for others which I am now brought here to do for myself. *Then* recommenced the prosecution; *then* am I become a libeller: but it sleeps till then; it was brought again fresh into life by that act.

"But

"But besides this, gentlemen, there is a great change not only in the person charged, but then there is a great change also in the appearance of the thing which is charged to that person, by length of time.—This advertisement was written in a time of profound peace. A civil war has since taken place: much blood has been shed: much mischief of all sorts has been suffered; and I wish I could say, that there was not much more in prospect. You cannot yourselves therefore easily put back your minds to that situation in which they would have been, had the prosecution followed close upon that publication. You cannot recollect the dates when certain injuries took place: unless one made it his particular study, there is not one of you can tell, whether this act passed at this time, or this proclamation at that time. If there is one of you who can recollect, you will find, that all those measures which take place against the rebels, have all been since that advertisement. General *Gage*, whom I subpœna'd, and who would not attend you, who says, that he is gone away to *Germany*, he ſhould have proved to you that he published a proclamation in which he gives notice to the *Americans* themselves, long after this affair at *Lexington* and *Concord*. He gives them notice to come in, and warns them not to do so and so, otherwise they should be considered as rebels, it was not therefore known that they were considered, in *America*, as rebels till that proclamation came. That proclamation was to work some effect: it must either be *intended* to make them rebels, who were otherwise not, or to make them known to be so, who were so. If they did not in *America* know that they were rebels, till the proclamation came, how should I here in *England* know it long before that proclamation did come? There is a great change in the appearance of this advertisement brought forward for prosecution now, from

from what it would have had to your minds at that time. This you are bound to consider. Indeed it was said from the bench, on the trials of the printers, that this advertisement blamed, and censured, and libelled *all the measures of government*—(relative to *America* I suppose).—All the measures of government, not the measures that happened *since* the publication of it, surely: and if they can find in that advertisement, that it censures all the measures *before*, I will be content to lose a verdict. You will not, gentlemen, for you must not, take it upon what that gentleman says, what I meant and what I thought. If you can make out that meaning from the advertisement, then do it; but you will find no word hinting at or censuring any man or any measure but that one measure of the *Americans*, being put to death by the troops. If you can find in that advertisement any name hinted at or alluded to, or any thing of that kind, the Attorney-General will be much obliged to you; for he cannot. If he could, he would have shewn you in what part it was. He would have said, *here* this measure is alluded to; *there* that great minister of state is alluded to. He has not, nor can do that; he has a reply coming forward, and, if he can do it, he will do it then. Therefore, gentlemen, you see that might be a libel, if it was written *now*, which was not a libel at the time when it was written.

"Gentlemen, I do not mean that my advertisement would be a libel, if it was written now. I know the contrary well; and so well, that, if it is become a *doubt* in this country, that it is a seditious libel against the king and government to charge troops with murder, I will write it again and again. If it is not a question, then I am satisfied; but it is made a *question* in this country, that no man shall charge a soldier with murder without being

being guilty of a seditious libel against the *king* and the *government*, then I will go into prison for life: for I will regularly charge the king's troops with *murder* (if they put men to death unauthorized by the law) regularly and constantly: and so I would do, if they made the punishment death. Gentlemen, if the advertisement had the aspect of a libel, it should have been prosecuted as soon as it was published, that so the mischievous tendency of it might have been prevented, and that fair play might have been done to me, and that you might not come to try an advertisement, forgetting that the advertisement preceded, and did not follow the rebellion. But if the Attorney-General has passed his time, I ought then, gentlemen, as in all other cases by law I should have, to have the benefit of the fault of my adversary. I ought not by his neglect and fault to be put into a worse situation than I should have been, if he had done his duty. But the Attorney-General said at first, in excuse for that, that it was owing to an *accident*. If true, so much the more fortunate for the defendant. But how appears it? How does it appear that it happened by an accident? Is that to be so slightly taken up, upon the Attorney-General's just hinting it? What was the accident? Has he *proved* it? Has he *named* it? He cannot name it. Let him account for it. I heard the late Attorney-General (the present chief justice of the *Common Pleas*) declare, that it was his duty to account for his conduct in bringing that prosecution against the letter of *Junius*; which was brought quick too, not in this manner. He said, it was his duty to account why he took one printer before another; because he looked upon himself in filing informations to be exercising a judicial, official power, and not merely an advocate at the bar, he thought himself bound to justify his conduct. Let the Attorney-General tell us the

the *accident*. I know something more of the recommencement of the prosecution than he thinks I do; and a very strange circumstance it was that brought it to my knowledge: however, I do not think I want that. But that is not all. An accident, he says, prevented the prosecution at the time when, he must acknowledge, it ought to have been prosecuted. Aye, but there is *another* accident. What is the accident which has happened, that makes it be prosecuted now? there are *two* accidents. He has only just hinted one of them (he has not told you what that is), but he is totally silent about the other. What is the accident that makes it to be prosecuted now, at the distance of two years? You see there is *one* accident which caused it not to be prosecuted at first, in a proper time; there is *another* accident that causes it to be prosecuted at an improper time. He is bound to justify himself (not only to you, but to every man); he is bound to tell you *both* accidents. I believe he will explain neither.

"Gentlemen, I am sorry to take up so much of your time. I protest, upon my honor, it is not to gain a verdict for myself: I have business to do that will take me up much more time than the judges dare to confine me on this charge. I *am* already a prisoner. I have been a prisoner in my own room much longer than they will chuse to imprison me. They will take care. The doctrines concerning libel have now risen to such a height, that they call for some remedy, and they will have it. The seeming necessity of the times will produce it: and if we shall not have it from justice and honor, we shall have it from necessity. Gentlemen, there are many other unfair practices in this case, besides this delay of prosecution. Observe how it comes on. The Attorney-General takes the printers first. Why not take the author first? He has said, indeed, that though it was signed (and he

makes that a great piece of impudence) he has said, that though it is signed with my name, it was—'as inscrutable and impossible for him to follow it, as if the name had not been put there.' These are the very words: 'as inscrutable and impossible as if my name had not been put there.'—Now, what said the evidence that he brought you? He told you that he had never refused; that he had never been asked; that they had never made the slightest inquiry after the author. Now, I appeal to your own consciences, is there a man in this court that doubts whether the Attorney-General doubted or not that I wrote that advertisement? Is there a man in this court that thinks so basely and so meanly of me, that having signed my name to an act of that kind, and paid (as I will prove to you) the money to the banker; is there a man in this court that doubts that the Attorney-General would have found a difficulty to come at me? There is none of you that can believe what he says in that respect: judge then of the rest. Gentlemen, he took the printers first. I will tell you why he did that: it was to gain the influence of a verdict. He meant to take me; he did not think it inscrutable and impossible. After he had gained the influence of a verdict on the printers, then he comes to the author. The question now comes with a prejudice before you. A jury has determined upon it, has declared it to be a crime. My God! Where is his honor and his conscience? But he says, that he did not know the author? He did know it, he was in possession of the proof before he tried one single printer; and therefore the printer, who is now evidence, was not brought on trial. The information was filed against him, and he withdrew his plea, upon an *agreement* with the Attorney-General; thinking perhaps (you may suppose) that I should play him some cunning trick, and sink the evidence.

dence. I mention this, because it has been thrown out, as if I had escaped from the power of the house of commons for want of evidence. The gentlemen (*looking at the Attorney and Solicitor-General*) know the case better; they know better., I know the gentlemen and their understandings. *They* know how I escaped, and will tell you presently.

"But, gentlemen, he takes the printers first, and which printer? He who printed it laſt of all others. Now, why did he take him firſt? I will not tell you myself, but the printer shall tell you. He was a ſtranger to me, and he wrote to me this letter.—'The printer of the *Whitehall Evening-Post* presents his most respectful compliments to Mr. *Horne*, and takes the liberty of sending Mr. *Horne* a copy of the information filed against him for publishing the advertisement signed by Mr. *Horne*, on behalf of the *Constitutional Society*; and as the printer has great reason to believe, from his living in *Middlesex*, that administration will make their first attack upon him, as they generally deem themselves sure of a jury in that county, &c.' Gentlemen, that was the reason why they took the printers first, and *that* printer: and (which is a very singular thing) though they convicted that printer, they have never brought him up to judgment. But Mr. Attorney-General said (and I had like to have forgot to mention it) that he did not know that I was the author. I have proved to you that he did know it before the trial of the printers. Common-sense ſhews to you that he did know it, and had evidence against me. But then, I suppose, he will say, he did not stop the trial of the printers, because that would have caused a delay. It would have caused a delay! What, after staying two years unreasonably and unjustly?—It would have caused the delay of a term to take the author first, and give him fair play. Will he by-and-by say, that he

did not stop the printers trials, and bring me on first, merely to avoid delay? The printers would have been much obliged to him for the delay; they wished and desired it. They offered him evidence. I told this honest man (whose face I never saw before), when he came to me, for the printers were not defended in the manner I wished them to be defended; the little advice I gave was not followed amongst the rest: I told this printer of the *Whitehall Evening-Post*, that I did not believe he could escape being tried first; but I told him he should send his attorney to the Attorney-General, and make excuses, and beg and pray that he might not then be brought to trial, but stay till after the *London* juries have tried the cause, and I advised (we had a meeting; I forgot to ask the witness the question)—and I then advised that printer, who was the evidence, that the *London* printers should endeavor to press on their trials; and urge that suspence was worse to them than any thing that could follow a conviction, and that the *Middlesex* printer should beg for delay.—Not that the Attorney-General might be imposed upon.—No, it would have been nothing but just and reasonable; but because I would either cover a man with shame, if he refused it, or at least (and so far kindly) prevent him, if possible, from exposing himself, by pretending that all this is the natural course of accident; that it was done to avoid delay; that it was integrity, honor, purity, and conscience.—However, I could not prevail: so great is the influence of that gentleman's office, and those connexions which it causes. Though the printer was eager, his attorney said, 'No, I cannot be concerned in the cause; I would not for 500*l.* I cannot speak to the Attorney-General; for God's sake get another attorney.'—'No, Sir, I don't mean that you should lose a client: I mentioned it, thinking that you could have

no

no objection to go to the Attorney-General and pray delay, till after the other printers had been tried; your client's wife is near being brought to bed'.—So the *Middlesex* printer was tried first, and a verdict gained. I did not wonder at it: I expected it.

"Gentlemen, though this was an accident, I must beg you to observe it is an accident which has always occurred. For in the case of that letter of *Junius*, which was prosecuted, the first person prosecuted was *Almon* (who was not the publisher, but had sold it at his shop), who lived in *Westminster*. Here too was the same accident, and it had the same consequence, except, indeed, that in that case the *London* juries recollected themselves; and though they had a verdict of a *Middlesex* jury, the *London* juries cast it out. There was however a struggle in their verdicts: there was something—but I will not enter into that now; they would not, however, suffer their minds to be entirely influenced and affected by the prior verdict so obtained. A gentleman, who was a juryman on that occasion in *Middlesex*, is now a baronet, and of great consequence in the *India-House*. Gentlemen, if you make yourselves useful, there is a better track open to you than the honorable and just gains of your profession. You will observe then that the same accidents always return, and they are never explained.

"Gentlemen, there is one part of the treatment of me in this prosecution that I think I have a right to complain of, as man to man. I gave them no trouble, I made no objections. I requested, when the jury was struck for the Solicitor of the Treasury (before witness), I told him I lived in the country, that I was always at home. I desired he would save me unnecessary trouble; and that he would do, as men say to the executioner, Do your office like a gentleman. He seemed to be well disposed towards

it, and treated me with great civility and complaisance. I desired him to present my compliments to the Attorney-General (and that if he would not do that office for me, I would do it myself), and desire he would let me know on what day he would chuse to have the trial. The Solicitor promised he would. He kept me upwards of a fortnight, never letting me know that it would or would not be tried. He kept me till seven o'clock at night the day before the last day of the sittings, uncertain whether I was to come here or not the next morning. What was the consequence? I had told him the consequence. I had a witness to send for one hundred and fifty miles. I sent for him, and I have again brought him (I am ashamed of the trouble I gave the gentleman, a stranger to me, I never saw him till now), I gave him the trouble to come and to go back two hundred and eighty miles. The person (and it is not a common person, a porter, or messenger that can be sent with a subpœna, when you do not know whether the witness will come or not); I was forced to send him the same way. The Solicitor for the Treasury knew it: yet he never would let me know till last *Tuesday* night (last *Tuesday* afternoon I suppose my solicitor knew it) when the trial would come on. My witness was forced to go back and come again. Now, what is your verdict, (suppose it pleased the Attorney-General to go on so two or three sittings more,) what is the effect of your verdict compared with that expence? Your verdict is the gentlest part of the prosecution. When I say your verdict, it is because then follow the judge's sentence.

"Gentlemen, if you do not know, it is proper that I should inform you, how the *London* verdicts were obtained. I was present in the court. One jury, I think, brought it in (at first) guilty of printing and publishing a most stupid

pid verdict! I am sorry that honest men should be imposed upon. Guilty of printing and publishing! I heard a gentleman once say, who has some skill in the law, that there was but one possible guilt that there could be in printing and publishing; and that was, if it was printed on gilt paper. The pun is poor enough; but not so stupid for the doctrine, not a bit. There happened, upon the trial of another of the printers, to be some difference of opinion on the jury. They came into court; they desired to be heard. A juryman desired to know, 'whether or not they were to find their verdict according to the information: that was his question (I don't know his name) which he desired to know. It was plain enough what that honest man meant. It is true, he did not express himself in the technical terms of the law, perhaps; but I did then say aloud (and I firmly believe that his lordship heard me; there are gentlemen in court that stood by and heard me) I did say (*a little heated*) 'his lordship dares not answer that question.' I said it out loud (I might well be supposed to feel a little) he dares not answer that question; for he dares not deny it, it is too gross: he dares not own it; for then he loses the verdict. His lordship did not answer it, his lordship did not. Are you to find according to the information?—Why, you are to find the information *according* to the evidence. You are to find the thing, with which I am charged, proved. The juryman said—according to the information.—Why he was to find *according*; for according means agreeing, and means nothing else. The evidence agreeing with the information! Why, yes, to be sure, what is he to find else? He must find that or nothing, for that is the only thing before him. However, that question was not answered. Then a little conversation of a strange nature took place—(his lordship loves conversations with the jury)

a little conversation took place about *intention.* I hope, gentlemen, I shall at least have this benefit by my trial, that the doctrine of intention will come out fairly and unequivocally from you; whether the jury have a *right*, whether it is their *duty* (it is the very gist of the whole matter) to determine what was the intention. The laws have confined the jury to one single word (so careful have they been). That word is guilt; that guilt which is charged. Guilt there can be none without intention. If guilt can be found without intention, so be it; but I hope that you, gentlemen of the jury, nor this court, will not be permitted to go away from hence with these equivocal sayings, which hitherto have been. Let it come out fairly, and let us know, in the name of God, what this doctrine is.

" Gentlemen, I did object, if you remember it—(I don't now intend to go into it, and I hope you will excuse the loss of your time)—Gentlemen, we talked something about the right of the Attorney-General to reply.—If there comes, said his lordship, *fresh matter.* There can come no fresh matter; the pleading is a different thing. The prosecutor is bound to foresee all that can be urged in defence by the person accused; and to answer it before it comes: that is, he is to make good his charge. If it is not so, see the other case, see, on the other hand, what I am to do. I am then to foresee what he has to urge against me; and if I do not, what follows? Why, all that he urges in his *reply* (as he calls it) is a new part of the accusation, which I shall have no opportunity of answering. The fact of publishing the advertisement is not disputed; I never disputed it: the whole matter that we have to do together is, for him to prove it a crime by law or argument: therefore, whatever argument he uses in his reply, if it has any effect upon your minds, I may be convicted (if convicted upon such argument) without ever having offered

offered the least offence; that is the blessed consequence of his right to reply: so that he is not to foresee what may be answered to his arguments; but the man charged is to foresee what arguments may be urged against him.

"Gentlemen, there lies this day a very great man in this country whose doctrine and whose practices were diametrically opposite. He enjoyed the office of Attorney-General. He has been a Chief Justice. He, as I am informed, never prosecuted but one libel, and that was Dr. *Shebbeare*, who is now pensioned by those who made this gentleman Attorney-General. What was his conduct? If ever there was an infamous libel against government, surely it was that (it is a great many years ago but I read it). What was Lord *Camden*'s conduct? He left the whole to the jury; intention and all: the whole; he cast you off from nothing of your right. He did not hold the threatening language—'You *may*, if you *will*, take it upon you.—Why that threatening? You *may* commit crimes, if you *will*, you may be as indecent as I may be supposed to be for repeating this; but, upon such an occasion as this, I reckon it not indecent. But, 'you *may*, if you *will*'.—Why you only *may*, but you are bound to do it; nor do you discharge your consciences nor your oaths, if you do not, but I hope you will have it clearly said, whether you are bound or not. Lord *Camden*'s remarkable words, when he finished his charge against the defendant, was, that he did not wish the conviction of him, if any man whatsoever doubted of his guilt.

"Gentlemen, another thing was said, which I must warn you against; it was said that this advertisement (I believe I mentioned it) arraigned all the measures of the government; (at least, I think, you need not search into the advertisement itself to be assured that it did not arraign the measures of government which have followed the

publication). The printers who have been brought to judgment, they have been sentenced a hundred pounds; and they suffered what they were not sentenced to, a week's imprisonment. Their fine it was represented was mitigated, for that they might have been or were imposed upon by the author, the libel coming in the shape and form of an advertisement, which disarmed their caution; and therefore the fine was no more. Formerly our laws punished men for being knaves, now I perceive they shall be punished for being fools. If a printer, for the sake of two shillings or half a crown, is imposed upon by a wicked incendiary; who, under the shape of an advertisement, disarms their caution and slips it into their paper; the jury have, you know, nothing to do with their intention; therefore there must be a verdict of course: the judges find the printers have been imposed upon; and therefore *only* imprison them a week, and fine them one hundred pounds. It was a dear half crown they gained. If the printers were imposed upon, they should have been acquitted. But by the evidence now given; you find they were not imposed upon by me; there was no imposition by me. What was my conduct toward the printer? This advertisement I am now giving you will offend certain ministers in this country: it is perfectly harmless and safe, and free from the cognizance of the law: the matter of it is just, it is true; but the law affords no ground or protection *now* from the power of the ministry in the house of commons, who vote men guilty! and vote things crimes! They have given out, owing to my forbearance I did not wish to expose the nature of that defence which caused me to go safe from the house of commons, being silent, they have propagated a report, as if (like an artful kicking attorney or solicitor that is not used to honorable practice) I had

made a charge upon them, and sneaked at it for want of evidence against me. I was determined for the sake of the laws of this land, that they should either, by forbearing to take notice of this advertisement, or by taking notice of it, let it appear that they have no power to punish a man but by the law: and therefore I furnish full evidence, in order to shew that even with the fullest evidence the house of commons have no power to try or to punish the subject. I knew I was safe from the courts of law, at least that I must there be tried by a jury; and they *may* do their duty, if they please. Gentlemen, for every minute of imprisonment that these printers have suffered, I do frankly and freely confess that I deserve at least a year, comparatively. If they deserved a minute, for every minute I certainly deserve a year, and for every farthing of that hundred pounds which they were fined, proportion only our guilt (if there is any guilt in the case), a million of money will not be sufficient for my crime. If they can justify their sentence on the printers, I will justify the court for the most ample punishment they can inflict on me. If I am guilty, no man upon earth so guilty; it was the most deliberate act of my life; it was thought of long before I did it. I made the motion; I caused the meeting; I subscribed a great part of the money; I procured the rest from my particular intimate friends; but I shall come to that by-and-by.

"Gentlemen, I have shewn you the method of proceeding by information, *ex officio*: I must now desire you to observe the method of punishment, when it comes to the court. Observe how that passes: the man is convicted this sittings; he is called up for judgment next term. 'Go to prison,' says the judge, 'and then we will think of your sentence.' They sentence him a hundred pounds;

pounds; but for what was the week's imprisonment? It is put into the sentence indeed—'And imprisoned until he pays his fine.'—Well, but could the man pay his fine till he knew what it was? Observe the distinctions which are made. A general officer, who is now in *America*, general *Burgoyne*, was prosecuted. He comes into court to receive sentence for hiring ruffians to destroy the electors coming to poll: what is his punishment? He is fined a thousand pounds; but he is not sent to prison whilst his sentence is deliberated upon; he is released instantly. Now what says our law? Our law says, that 'A corporal punishment, however small, is greater than a pecuniary punishment, however great.'—*Quælibet pœna corporalis, quamvis minima, major est quâlibet pœnâ pecuniariâ, quamvis maximâ*—Or something of that kind. Well then, the greatest offenders, you see, have not the greatest punishment. The miserable printer who is imposed upon by an incendiary—to prison with him, we have not time to tell you now what we will do with him; and yet it does not seem to be a very difficult case; but in a very uncommon case, that of an officer of the king's troops hiring ruffians to destroy the electors coming to poll, and thereby gaining a seat in parliament; on this case no deliberation is necessary; or it is taken properly before he is brought into court, that he might not suffer a moment's imprisonment. You see the difference. The delinquent was wished good morning; the judge from the bench, when the general paid down his fine in court, wished him good morrow. Another man was lately prosecuted, who would have taken away the estate of his neighbour, that neighbour not consenting illegally to lose it. He sent him a challenge. He is prosecuted and convicted; no deliberation for sentence; not a moment's imprisonment.

ment. He is fined a hundred pounds, and application is even made by the court to know if any body ever knew a precedent for a smaller punishment. Nobody indeed ever did: and yet this challenger was an elderly member of parliament, and a justice of peace for the county where he lived. He was still better off than with a good morrow: he was told—*Idem alii fecêre, et multi et boni.* 'Other men have done the same thing, Sir, as you; and many other men, and good men!'—If he was a good man, why was he punished? He stood not, at that time, a good man in the court; he did not appear there for his goodness.—Gentlemen, I some time ago hinted something to you of the motives for this prosecution. I will now go no farther, than only to shew you clearly what could not be the motives; and I will leave your minds to determine what is the motive; only so far I will say, that if the change in my situation, if I was allured to it by the lucrative emoluments of the profession, I wished to share in the legal plunder of the people; this prosecution might then be very serious; but I laugh at it. I am out of the reach of the intended consequences of this prosecution; I say *intended* consequences, for rely upon it, I am better known to those who have caused this prosecution, than for them to have only in view the consequences of imprisonment and fine. No, they know better; they know that no man act as I have always done, who mean to be stopped by imprisonment and fine. But, gentlemen, I will shew you what is not the motive of this prosecution; the motive of this prosecution is not to prevent the evil tendency of this wicked libel; of this horrid charge against the king's troops of murder; against soldiers who never commit it, who are not likely to commit it. I am sorry to read to you any paper: (I did intend to read many, but the time I see will be too long) I will

I will only read one or two to you, just to satisfy you of some things which you perhaps are not aware of. Here is the Public Advertiser of May 30, 1775. You will find in it a very serious, very particular, very sharp accusation against the king's troops of murder, the whole circumstances at length; and murder, murder, murder in every line; but it is so long that I will not read it to you now; because you can all remember to look at it hereafter. The papers are May 30, and 31. The government then, I mean the minister, (I make an improper use of the word government) the minister desires the public, upon this charge of murder against the troops, to suspend their belief. What follows? This paper which I have proved—'As a doubt of the authenticity of the account from Salem, touching an engagement between the king's troops and the provincials in Massachusetts Bay, &c. I desire to inform all those who wish to see the original affidavits which confirms that account, that they are deposited at the *Mansion House* with the right honorable the Lord Mayor, for their inspection.'

"Then comes the copies of the affidavits; all the particulars are at length; murder is not spared at all. Then, amongst the rest, comes an affidavit, which I shall prove to you presently, more authentically than this; though it is enough for me that it was published. But you know, gentlemen, I am not the original author of the charge. The gentleman has been talking of the original author of the charge; he thinks he may may tell you so now, two years afterwards, but if he had told you so at the time of this advertisement, every man in the court would have laughed at it. Here is the original charge, signed by the agent of the province where the murders were committed, and the original affidavits confirming it are here said to be lodged with the Lord Mayor for inspection.

tion. It is very lucky for Mr. Lee that his receiving them, and causing them to be advertised, has caused no prosecution against him. We shall know presently whether it is a forged affidavit or no: the gentleman for whom it is given attends here by my subpœna, to prove or to disprove it:

'I Edward Thoroton Gould, of his majesty's own regiment of foot, being of lawful age, do testify and declare, that on the evening of the 18th instant, under the orders of General *Gage*, I embarked with the light infantry and grenadiers of the line, commanded by Colonel *Smith*, and landed on the marshes of *Cambridge*, from whence we proceeded to *Lexington*. On our arrival at the place, we saw a body of provincial troops armed, to the number of sixty or seventy men. On our approach, they dispersed, and soon after firing began; but which party fired first I cannot say, as our troops rushed on, shouting and huzzaing previous to the firing, which was continued by our troops so long as any provincials were to be seen. From whence we marched to *Concord*. On a hill near the entrance of the town, we saw another body of the provincials assembled; the light infantry companies were ordered up the hill to disperse them; on our approach they retreated towards *Concord*. The grenadiers continued under the hill towards the town. Six companies of the infantry were ordered down to take possession of the bridge, which the provincials retreated over; the company I commanded was one. Three companies of the above detachment were forward about two miles. In the mean time the provincial troops returned, to the number of three or four hundred. We drew up on the *Concord* side of the bridge. The provincials came down upon us; upon which we engaged and gave the first fire. This was the first engagement after the one at *Lexington*.

A continued

A continued firing from both parties lasted through the whole day. I myself was wounded at the attack of the bridge, and am now treated with the greatest humanity, and taken all possible care of by the provincials at Medford.

'Signed,

'EDWARD THOROTON GOULD.'

"When first I heard this prosecution, and not before, I began to consider with myself, whether I had indeed made use of any such expression or word, as distinguished by what I had said from the case of many other persons. Not a day passed but I found some newspaper with the charge, containing the same word murder. I need not read any of them to you; you can all recollect. Go to the papers that are published to-day, to those published before this charge was brought against me and since, and see if you don't constantly find in them this charge of murder against the king's troops. I took extracts from them till I was tired; and not only from newspapers, but several other publications; from that honorable gentleman's publication and others, which are of more consequence than fugitive pieces in a newspaper. These all prove the Attorney-General's nice sense of honor and integrity, and regard to the public good, who prosecutes this advertisement. Now, that men may be misled by it, after suffering them to run wild for two years, and be misled without any controul! But, gentlemen, so far from that being the motive of this prosecution, the papers are all full of the same charge, and will continue full I have no doubt. I protest upon my honor, they are none of them made by me: I have been dumb ever since. I meant to do good by it when I made the charge; I have been dumb ever since, because I could not see any good that was to be produced. If then you see what is not the motive for this prosecution of me, at this distant time,

time, that will lead your minds to conclude what is the motive.

" Gentlemen, the language of the Attorney-General forces me to say a few words upon a subject which is most disagreeable for man to speak of; unless it is indeed when he appears, as I do, a defendant. I thought, when the Attorney-General opened this charge upon this prosecution, that he would have taken a different line from that which he repeatedly pursued in the trials of the printers. He knew that I had heard him talk against indecency, a flood of obscenity, and scandalous publications. I had already heard him charge that advertisement to be full of ribaldry, Billingsgate, scurrility, balderdash, and impudence. I have not that poor advertisement. I thought upon this prosecution he would not give me the advantage to say the same things, or take the line before. It is true, he gained a verdict by that line before, and therefore, perhaps, thought he might this time. I own I did think that he would have paid me the compliment of something a little new; but he says that he never knew so much of my talents and learning as at this time. The gentleman's memory is short; I would have forgot it, if he had not. He represents me in the light to you of a scurrilous, ribald, balderdash, *Billingsgate*, impudent fellow. That boldness, with which I defend the right of the subject, passes for impudence; those who know any thing of me must judge whether I am impudent upon other occasions.

" Gentlemen, he has followed, in this description of me which he has given, and in that character with which he has been pleased to clothe me—he has followed the old practice of some ingenious tyrants, who used to dress men up in the skins of beasts, in order to encourage the dogs to worry them. Just so this gentleman dresses up his victims in the characters of beasts, in order to expose them to your indignation.—He had no pretence

whatever for representing me in that light. I do the more wonder at this language from him, because he knew better. He has said, indeed, that he did not know the gentleman. The word *know* has many different meanings. He did not know me as a friend, or as an acquaintance; I never had that honor; but that he did know me so far as to know much more my talents and learning, (if there were any in the case,) than what he can possibly have picked out from this day's hearing, is a notorious fact. However, gentlemen, if I am that Billingsgate fellow, unfortunate is it for the Attorney-General that a fit of Billingsgate then once took him; and whilst the fit was on him, he applied to a gentleman to introduce him to my company, absolute stranger to him as I was; I did not request it; the Attorney-General requested it. Perhaps the gentleman who introduced him is in court. The fit was not a short one: my conduct and character was not, in his declared opinion, such as he now represents it. I believe we sat in a public coffee-house together, though in a private party, I suppose, from eight, or after past eight in the evening, till midnight considerably. I don't mention it to plume myself upon his distinction; I claim no honor from it; the gentleman might be desirous of seeing me as you go to see a raree-show, or as you would any strange creature; it might be from some curiosity. I never was vain enough, gentlemen, to impute it to myself as a merit; I did not see any reason to grow proud upon it; but I mention it particularly for this reason, that not only it ought to have saved me from such a representation of character, but it ought to have saved the Attorney-General from pinning such motives upon me as he mentioned in another trial; such as the gaining of half a crown, or the flying in the face of the government. When he was in possession of my motive, he knew perhaps better than most

most men in *England*; and though I don't think I have a right to repeat what passed from that gentleman (though there was nothing in it dishonorable to him), yet I may be permitted to say what came from myself to him. A question was asked me, to account for a part which I played; and why I, who did not then seem to him to be a desperate man, driven by necessity to it, or that ill-behaved man, or that fool (for great numbers of patriots and ministerial men go from folly on both sides), he seemed to think I might have some more honorable motives about me, and wished to know what they were. I told him my motives; and it is a strange circumstance that I should then tell him that motive, which is the very motive of this action of mine which he now prosecutes. I told the gentleman, in the year 1768, that there was a certain sect of religion (which I named), which, of all others, was most abhorrent from my principles and way of thinking; but I added, 'Persecute them to-morrow, and I will declare myself of that sect the next day.' I appeal to himself; he will remember it; it is rather too remarkable. I will mention the sect if it is necessary. Shall I repeat the name of the person, the introducer, and the place? If there is any doubt, and he desires it, I will mention the particulars; because I should be sorry to be laughed at as if advancing a falsehood of this kind, and pluming myself for passing a few hours with the gentleman who happens now to be Attorney-General. This passed long before this wicked advertisement; long before I could foresee that the Americans were to be treated as they have been. I think it should have saved me from such a representation of character, and from such motives as have been imputed to me, from that gentleman at least, if he acts (as he pretends) without direction from others; for he has seen me steadily pursuing the same motive. Every action in which I have been known to be concerned, has

steadily been upon one and the same principle. I have never had occasion to support a friend or an acquaintance to promote an election, or to vote, or to do any thing for my particular connections; they have always been absolute strangers to me, and men taken up upon the footing of oppression. Friends!—Yes, if friendship received from me could make them my friends. But friends!—No, if any friendship received from them was necessary to make them so. My motive has been constantly the same; I know no *American*.

"Gentlemen, I have been more concerned in my room than I have with the commerce of men in the world; and I read there, when I was very young, that when Solon was asked which was the best government, he answered—'Where those who are not personally injured, resent and pursue the injury or violence done to another, as he would do if done to himself.'—That, he said, was the best kind of government; and he made a law impowering men to do so. Now, gentlemen, we are happier we are under a better government; for our laws enjoined us to do what he only empowered men to do. By our laws the whole neighbourhood is answerable for the conduct of each: our laws make it each man's duty and interest to watch over the conduct of all. This principle and motive has been represented in me as malice. It is the only malice they will ever find about me. They have, in no part of my life, found me in any court of justice, upon any personal contest or motive whatever, either for interest, or profit, or injury. I have kept you too long to say a tenth part of what I intended to say, and I believe it is not necessary: I shall therefore pass over many things that would give to some pleasure, and to some pain. But as they are of that nature that I shall give myself the liberty of using upon other occasions, as I please, doing no wrong, I can

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the more readily forbear them here. But, gentlemen, in this matter of charging the king's troops with murder, there is a very striking circumstance, and that too, I suppose, the Attorney-General will have forgotten. It is well known, that amongst other oppressions and enormities which gave me pain, murders (without any contest and dispute) committed and pardoned, gave me much. I caused the soldiers in St. George's Fields to be prosecuted—*the king's troops*—for murder. I took them up; it was called no libel by the then Attorney-General; no libel against the government. They were tried for murder. I did intend to have told you how they escaped; but it matters not. They were tried; they were charged with murder; and that not only in a court of justice: I advertised it, I signed it with my name: the same printer (I forgot to ask him as an evidence; indeed I had before asked him for a newspaper that contained the advertisement, but he could not send me one,) he could have proved it, but it is notoriously known, I charged that murder upon the king's troops with my name. It was not thought a libel then; it was thought a very great affront: for those troops had been thanked, in the king's name, for their alacrity upon the occasion. What then, If the king's name had been abused to thank men for their alacrity, what then? (I did not mention that, but I mentioned the murder committed.) There was murder committed. With my eyes, I saw many barbarities committed. I might have been amongst the slain. Shall I not mention what I saw with my own eyes? Shall I have no tongue nor understanding, but in a court of justice? I certainly will. What followed? Soon after that, Mr. *Stanley*, a considerable officer in the state, moved in the house of commons, for an act of parliament to take away from the subject the right of appeal in the case of murder; because I had caused appeals to be brought; that is, I assisted the

parties who brought them. This motion was supported by Mr. *Selwyn*. Mr. *Dyson*, a lord of the treasury, declared himself to be entirely of their opinion ;—'because the right of appeal for murder was (he said) a shackle upon the king's mercy, but he begged a delay until the next winter, when he promised it should have his assistance ; that so the motion might not appear in the journals of the house all the summer, to *alarm* and *terrify* the minds of the people *before* that bill could be passed into a law, for which at present, he said, there was not time.'—To avoid its alarming the people before it could be passed into a law!—Well, it did not stop there: some notice was taken of this, but not much, as it was for that time dropped. But this motion was revived some time after: Mr. *Rose Fuller* (a better man to come forward upon such an occasion,) gave notice of a renewal of that motion in the house of commons ; he was supported by the Attorney-General. I was alarmed at that, (and I will prove it: I am not now asserting what I will not prove.) I instantly published what they might have called a libel, if it had not been upon such tender ground. I sent it to the public papers with the initials of my name ; I inserted in it such matter as could not fail to make it be known to come from me. That did not content me ; I requested an honorable member of that house, who is now in court, Mr. Alderman *Oliver*, to present my compliments to Mr. *Rose Fuller* and the Attorney-General, and to inform them, that upon that ground I was ready to go, even to death ; that I would stick at nothing ; that on such an occasion, I feared no prosecution for libel. I entreated them to tell me when they would bring the motion on, that I might be present to hear what passed, which I would faithfully report and freely comment upon. The Attorney-General, in his support of that motion, had reviled the right of appeal in the subject for murder

as a *Gothic* custom. Gothic was the invidious charge he brought against it; it was a Gothic custom! Why, gentlemen, so are all the rights and liberties, and valuable laws which we have, they are all *Gothic*. But this was to be plucked out from amongst the rest; and because it is *Gothic*, that men should be punished for murder; because it is a shackle upon the king's mercy, murderers are not to be punished.

"Gentlemen, this attempt has a near affinity with this prosecution of me, for a libel against the government, for charging the king's troops with murder. Gentlemen, I beg your attention to this matter; for you see, they have got farther now in their systems and doctrines; and the mere charging of the king's troops with murder is to be considered as a seditious libel against the king and the government! But what thought the house of lords at the time of the Revolution upon this *Gothic* custom?—King James II. had cut off and murdered many of the peers, under a sham trial of commission of peers, whom he picked out. At the revolution they took care to secure themselves from such trials in future; and therefore, on the 14th of January 1689, they entered this among their standing orders:—'Whereas this day was appointed, for taking into consideration the report made on the 8th day of this inst. January, from the lords' committees of privileges, concerning the trials of peers; after due consideration had thereof, it is resolved, by the lords spiritual and temporal in parliament assembled, that it is the ancient right of the peers of England to be tried only in full parliament for any capital offences; and it is ordered, that this resolution be added to the roll of standing orders of this house.'—This was to secure themselves; but when they had done this, some noble spirits amongst them being alarmed and apprehensive, lest, under this pretence, in future times, the subject might be

deprived of his right to prosecute those who had committed murder: they (three days afterwards) on the 17th of January, entered the following declaration:—'It is declared, by the lords spiritual and temporal in parliament assembled, that the order, made the 14th day of this inst. January, concerning the trials of peers in parliament, shall not be understood, or construed, to extend to any appeal of murder, or other felony, to be brought against any peer or peers: and it is ordered, that this declaration be entered on the roll of standing orders of this house.'—The peers, at the Revolution (all *Gothic*, as it was), took this right of the subject, and hugged it to their bosoms; and this too in their own case against themselves. They would not themselves be exempted from a possibility of being prosecuted to judgment, that justice might be done for the lives of the king's subjects, even if slain by themselves. However, gentlemen, this *Gothic* right of appeal is not as yet taken from us; and I do firmly believe, that by the resolution which I shewed, and by the message which I sent, and by the libel which I published, (if such things be libels,) I do believe I have the merit of putting off (at least for that time) so infamous an attempt. Infamous four-fold, if you consider the doctrine now brought forward.—The king's troops shall not even be charged with murder! Observe then what follows: the king perhaps will not pursue; the subject shall lose his right of appeal; and you shall not even dare to say that the king's troops have committed murder.

"I have already taken up much of your time, but I hope that the importance of the doctrine brought forward in this case, as it is the first (there is no precedent of such a one), I hope that shall be my justification.—Gentlemen, I will now come to the advertisement itself: the Attorney-General says it is a scandalous publication: and he has repeated all those terms which I have before mentioned

to

to you.—Now, gentlemen, pray consider with yourselves to what purpose has he done this? Look at the information, (you have a right to carry it out of the court with you;) see if you can find any such charge in the information; see if you can find any thing tantamount to ribaldry, or scurrility, or *Billingsgate*, or balderdash. These make no part of the information at all. He has done it merely to mislead and inflame. But he complains of scandalous publications! Who has most cause to complain of scandalous publications (taking the nation as divided in opinion between the Tory and Whig doctrines)? Who has most reason to complain of scandalous publications? Read Dr. *Shebbeare* and the Archbishop of *York!* a pensioner of the crown, and an Archbishop just created so by the crown! See how they have treated the Presbyterians! And yet, I presume, they are as respectable a part of the king's subjects as the king's soldiers! I think that to alienate the minds of the Presbyterians, or of others from them, is doing no great service to this country! Why not prosecute for that? No; pensions and mitres shall reward them! But not to talk of these general matters, the Attorney-General, in a prosecution of me for a particular advertisement, thinks it his place to talk of scandalous publications. Pray take the two individuals, the Attorney-General and myself, which of us two has most cause to complain of scandalous publications. Judge fairly between us: he, a gentleman in great office; a gentleman necessarily exposed to the difference of opinions about his conduct: myself, an obscure man, who never was a candidate either for honor or for profit; who have no claim to the notice of the public. Compare this with the situation of that gentleman, then compare the ribaldry and the scandal that has been published about both; and judge which ought most to have talked of scandal in this prosecution. Gentlemen, I have had the honor

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to be burnt in effigy, and I saw myself committed to the flames. I have been sung about the streets in ballads, and I saw a little pert parson cocked up upon a stick in the singer's hands. The newspapers for some years were even sick of my name. Even my clothes afforded an entertainment for the wit of the theatre: as for caricatures, I have myself bought enough of them to furnish a room: my rooms are but small, as you may easily suppose.—My life has been written, with my name at length, and the Atheist and macoroni parson printed at the bottom of a print in the frontispiece. Atheist! and with my name at length!—Scandalous publications to be sure, should be urged by that gentleman against me.

"Gentlemen, I have never complained of those imputations. I protest (except with very ignorant, very poor creatures, and it does not signify what they think,) I don't think those imputations ever hurt my character; and if they have, I will take the chance of time to refute them. There was indeed one imputation that I believe did get some ground; and I thank the Attorney-General for now relieving me from it: it was the worst of all the other—a corrupt pensioner of the crown.—That was an imputation which I believe did stick by me; but there is no wonder at that at all: I did not even for that so much as accuse the publications and the writers; it is the practice of the times, and the corruption of the minister, that libelled me! Every man may, without being absurd, suspect his neighbour of corruption, without any specific charge brought against him. Good God! in a nation of lepers like this, who can expect to be thought clean! However, I agree with the Attorney-General in all that he has said generally against scandalous publications: they ought to be, and the laws (without straining them) are now sufficient to cause them to be suppressed. But, gentlemen, I shall never be found

in the list of those dealers in scandal. Well, but in the advertisement he tells you, there is scurrility, Billingsgate, ribaldry, and balderdash. The gentlemen of the law love to go by precedents. The Attorney-General found a precedent for it, and therefore (without considering whether it would apply or not in this case) he made use of it to eke out the time. Mr. *Noy*, the Attorney-General, in the Star-Chamber, prosecuted a man for speaking disrespectfully of stage plays; and he said, that—'It may be fit enough and lawful to write against plays, by men that have a *mission:* and they must do their errand in mannerly terms, as other men expect to bear with them. Mr. *Prynne* had no *mission* to meddle with those things, to see whether men should not return to gentilism. The terms which he useth are such as he finds among the oyster-women at Billingsgate, or at the common conduits—Mr. *Prynne* had no *mission*, it seems, to prevent men from turning heathens; and therefore he ought not to endeavour to prevent them from turning heathens! But however, gentlemen, if I have used *Billingsgate*, and those bad terms with which he charges me, I shall not be angry with the Attorney-General, but very much obliged to him, if he will help me to correct my language. I am sorry, however, to find that he does not intend I shall have much benefit by the example of his own. He has charged the advertisement with impudence too: and it seems, gentlemen, by what I heard from him in the other trials, and in this, to be a very lucky impudence for me: for he did say, that '*Wicked* is a term too high for this advertisement.'—These are the very words; I took them down: *wicked* is a term too high for this advertisement—upon what then, does he expect to gain a verdict? He said, too, that its impudence disarmed its wickedness! Why, gentlemen,

tlemen, that was in plain words telling the jury (if they had at all adverted to what he said) that they had nothing to do with that advertisement; for if it is not high enough to be wicked, it is too low for the verdict of a jury. You have nothing to do with legal wickedness; a man cannot be prosecuted for scurrility and impudence;—but where, in which words of that advertisement, is this scurrility and Billingsgate? In which sentence is the unmeaning ribaldry and balderdash? Billingsgate, I believe, is a term taken from a drunkard's table. Balderdash (if it means any thing) means a rude mixture, a confused discourse. Does he prosecute a rude mixture, and a confused discourse? If its aim and its object are difficult to be found out, is that an object of prosecution? In that case, it might as well have been written in *Hebrew*. But, gentlemen, all this was merely to inflame and mislead you; and therefore I shall not dwell upon it. But, gentlemen, whilst he has been mispending the time of the court, in that which makes no part of the information; I mean its falsehood. Falsehood is a part of the charge, and it is a criminal and an odious part of the charge; and if you don't find it in the advertisement, you cannot give a complete verdict. Falsehood is a part of the monster which he has exhibited: and if one limb of it is wanting, you cannot give him a verdict.

"Gentlemen, I shall prove the assertions of the advertisement to be true by my evidence; and I will not now delay you with them. And, gentlemen, I shall prove to you a thing which may now perhaps be a little useful to my character; (if it suffers under that stigma of *Billingsgate*, and balderdash, and incendiary intentions, with which I am charged); for I shall not only prove that the motion was made, the money collected, and paid, but I shall prove to you, that the advertisement of the first sum

did produce the second. The Attorney-General says, it was only a fetch to fly in the face of the law. It was a *fetch*. It *fetched* 50*l.* more; and I will prove to you that it did so. I will tell you the person who sent it, and the person who conveyed it to me; because the purpose for which the money was given, the gentleman who subscribed it, and the gentleman who conveyed it, are all worthy of each other. The money came from Sir *Stephen Theodore Janssen*, who is now out of the reach of envy: it was conveyed to me by Mr. Alderman *Oliver*, who, though living, is equally out of the reach of censure; and it was paid for the purpose for which it is declared. And, gentlemen, I am the rather inclined to prove these circumstances to you, because his lordship, in his charge to the jury, on one of the latter trials, finding that no evidence had been brought of the truth of the assertions in the advertisement, was pleased to forget a doctrine I have sometimes heard about truth; and threw in, as a make-weight into the scale, an insinuation of the possible falsehood of the advertisement. His lordship said, he 'did not believe such a proposal had ever been made, or such money contributed, or paid, or even such a society named existing. He hoped there were no persons capable of such an act; he hoped, and *therefore* he believed!' It is a tolerable insinuation to a jury! He hopes there are no men capable of such an act! What dismal act must this be? It must surely be some act that excludes a man ever after, surely, from being admitted to sit cheek by cheek, and laugh and joke together with his lordship. It must surely be an act of that kind that a man must be held in abhorrence. No honest man could keep one company after it. 'He hoped there were no men capable of such an act, and therefore he believed it.' After this, the Attorney-General, from his lordship, took the same cue;

cue; and therefore, in a succeeding trial, he too insinuated, that the subscription was a mere pretence (a fetch he called it) to colour the advertisement. I own, when his lordship hoped, and *therefore* believed, I was in some pain for my own existence; and though I stood close at his elbow, I did not know but he might believe next, that there was no such person as myself existing in the world. And yet I have heard his lordship say, on other trials, (and if I misrepresent him he will do justice to himself,) I have heard him say—'What! shall not a judge and a jury know and believe what every one else knows and believes?—(and it was upon a trial for a libel)—Shall they alone be supposed ignorant of these known and notorious facts which no one else in the court doubts?'—As I do not therefore know which of these two doctrines his lordship may adopt on this occasion, and cannot tell what he may believe, (because I do not know upon *all* subjects what he may hope,) I shall therefore prove the truth of my advertisement. And when I have done that, perhaps, gentlemen, you will be told (as I have heard it said) that *false* in the information stands for nothing, and is no part of the charge; though, observe, if I omit proving the truth, they will not fail to aggravate the charge, by insinuation and falsehood. Now then, gentlemen, I come to the very great offence of all; to that which does indeed make a part of the information, but has made no part (except in assertion) of the Attorney-General's harangue.—I mean, charging the king's troops with murder. I am told, that it is not for any of those assertions about subscription, and payment, and collection, that I am prosecuted; but it is for charging the king's troops with *murder*. *There* the Attorney-General said, he 'put his finger.'—I have not charged the king's troops with murder: there is not any such assertion in the

the advertisement. There can be no charge, no truth, or falsehood, but in an assertion.

"Gentlemen, I have no more asserted, that there were any persons murdered, than I have asserted that they have left behind them widows, orphans, or aged parents. Perhaps no persons were murdered, perhaps no persons were even killed at *Lexington* and *Concord* on the 19th of April, 1775. Perhaps, if there were any killed, they were such as they have left behind them, neither widows, orphans, or aged parents. The advertisement does not assert any of those things. There is indeed a description in the advertisement of certain persons, for whose use a collection was made: if there are no such persons, the intended charity will not take place. I indeed suppose the charge to be true. Others had charged the king's troops with this murder, nine days and more before my advertisement. I have shewn you where, in the same newspaper of May, the 30th and 31st, 1775, signed by the agent of the province. I supposed that charge true; but I did not make it. I took it as I found it. The charge was in all the newspapers of May 30th and 31st, 1775. Why not prosecute those that brought the charge? The charge was authenticated in the most formal manner: original affidavits, taken on the spot, were lodged with the Lord Mayor of *London*. The charge was not anonymous; it was signed by the agent of the province where the murders were committed; it was signed by Mr. *Arthur Lee*. He publicly avowed it every where. He sat daily in this court, with the chief justice and the Attorney-General, publicly as an advocate: he was retained on one of the trials; he stood up to avow it: his lordship knew what he was going to say, and would not permit him to speak: it was in the first trial at *Westminster*. You see then (nay, you know it from a thousand publications) that this was not a wanton suggestion of my own;

nor

nor yet lightly taken up upon a slight rumour: but it was so given to the public, that no man could reasonably think of it. The *Gazette*, published by authority, desired every man to suspend his belief, in declared answer to which these affidavits came. It has never since been contradicted, even by that very authority that desired us to suspend our belief. But, gentlemen, though I did not make the charge in this advertisement, to save trouble I am willing to have it understood, that I did make the charge in the advertisement: I do again make it now. I did not word that part of the advertisement in the descriptive manner in which it stands through caution, and as a subterfuge to insinuate a charge which I was afraid to make: so far from it, that I do tell you again I allow the charge.

"I believe, gentlemen, these murders will never be forgotten as long as the history of this country shall remain; for the murders of that day, the 19th April, have been productive of all that slaughter which has happened since, and of all that which is still to come. Suppose, then, gentlemen, if you please, that I had charged the king's troops with murder. Well, what then? How follows the libel against the king and the government? For you must take notice that the accusation in the information is not that I have charged the king's troops with murder. That would not have supported an information: an information could not be supported upon that charge. The charge against me is, that I have charged the king and the government with murder. And to-day the gentleman has spoken a little more plainly than he did before. To-day he says, that 'I have charged the persons employed by government with being guilty of murder; and *consequently* those who employed them are involved in the same guilt.' This is the charge against me; but how does he draw the consequence? Is

Is that to be found in the advertisement? Does every man, that says a soldier has committed murder, involve the king and government in the commission of that murder?

"Gentlemen, I have not, in my advertisement, even charged the ministers. But if I had, I hope the ministers or the troops are no part of that government which you acknowledge; at least I am sure the troops do not make a part of that government under which I was born; they do not make a part of that government to which I have repeatedly sworn, and always held the most faithful and firm allegiance; and I will say more, they do not make a part of that government under which I will ever silently live. Indeed, gentlemen, Mr. Attorney-General seems to think the troops something more sacred even than government; for he said, in aggravation of the charge, that it was not 'only a libel against government, but *even* against the soldiers in our service.'—If he should happen to forget this also, the counsel who answered him at the time, and took notice of it, I hope will remember it—'not only a libel against the government, but *even* against the soldiers in our service;' so that the troops are something more than the government! I believe they are intended to be made so; for ours is a government of laws, not a government at will, either by troops, commanders-in-chief, ministers, or kings. Consider, gentlemen, that the king's troops are only tolerated in this country for the purpose of foreign defence. They have been but of late years tolerated in time of peace. They have only an annual existence; which existence expires yearly, unless regenerated by yearly vote. Now, gentlemen, consider! Hanoverians, Hessians, Brunswickers, Waldeckers, the very *Indian Savages*, (for of these are the king's troops now composed,) all these, by Mr. Attorney-General's doctrine, make a part of the blessed govern-

ment of this country! and to charge any of the king's troops with murder, is to be guilty of a seditious libel against the king and against the government!

"Gentlemen, reflect: have not the king's troops been charged with murder? Does there pass a year where some of them are not convicted for murder? And in the last good old king's reign, were they not executed too for murder, when they were convicted? It is too notorious.—A libel to charge the king's troops with murder! I believe nobody ever dreamt it was a libel against the government, or even against the ministry, to say that some of the king's troops have committed murder. If such a charge is false and malicious, (and a false and malicious charge may be made against the troops as well against another person,) it may be a libel against them, just as it would be against any other of the king's subjects; and they must seek the same remedy. They are not nearer, nor I hope dearer than we are; than any other of the king's subjects.—How long have the troops been those privileged characters? Suppose I had said (as I believe I might truly), and as I know it has been said, that many murders have been committed by the king's patents; does any man think that the Attorney-General would have prosecuted that as a seditious libel against the king and government? And yet the king's patents are just such as he pleases to make them; they are of his own begetting, and much more as he pleases to make them, than even his children. But the troops, what are they? What are they, whose origin we know? What are those who are of our own country?—Many of them felons, taken from gaols and rescued from the gallows. Of these are the king's troops composed. And is it wonderful to charge the king's troops with murder? But it is too ridiculous; I am sure the Attorney-General does not, he will not, pretend to say, that every particular charge against some soldier or soldiers for murder,

murder, is a seditious libel against the king and government! He will not say so. Suppose, gentlemen, some of the king's peace-officers had been charged with murder. It has often happened: constables and peace-officers may exercise their authority in an illegal manner; they may kill men instead of arresting them. They have done it; they have been sometimes tried for it. Are not they as much the king's officers as the troops? Something more so, I suppose; for they are the officers of the *real* government of the country; the officers of the laws, and yet was ever any man prosecuted, or would any man now be prosecuted, if he charged a pack of constables with having committed murder? Would that be a libel against the king and the government? It could not be. Gentlemen, suppose some of the soldiers, as brutal as *Kirk's* lambs, (soldiers, for their cruelty, known by that name,) should renew again the horrid barbarities which they committed in the west; would it then be a seditious libel to say that they had committed murder? I do not say nor know, that the king has at present among his troops any lambs of *Kirk's* breed; but I am sure he had in 1768; because I then saw them not only commit murders, but other barbarities which not a savage hardly would commit. I saw one of the king's troops run his fixed bayonet under the shoulder-blade of a poor man, because he could not get under a rail time enough out of his way; I saw a woman with-child wounded; a ginger-bread woman murdered, as she sat at near a quarter of a mile distance. Were not they murdered? Were not these murders committed by the king's troops? By as numerous a body of the king's troops as those who committed the murders at *Lexington?* Gentlemen, there was a person present; I don't know that I have a right to mention his name; but he said he had served as a surgeon under *Braddock* in *America*, and he told the justices of the peace that, even

in that country, he had never seen murder so wickedly, so wantonly committed. But perhaps the Attorney-General does mean still to prosecute me for calling them murderers. Why should he not? It is nine years ago! I don't know but that, as soon as this prosecution is over (if you should establish this doctrine), he may follow it with another prosecution for that libel too. The same printer can prove it: and I shall not deny it.—But the Attorney-General will, I know, from necessity, be obliged to say, that is a very different case from charging some individual soldiers with murder. The king's troops *here*, he will say, acted in that capacity, as the king's troops, in a body, under their officers, and in a military manner, as a part of the king's army.—Well, it may be so; but, however, that is more than he has proved to you. If you believe that, you must take his word for it, or you must have it from the evidence which I shall produce. But if the Attorney-General makes or attempts to make this distinction to you, gentlemen, between individual soldiers and those acting as part of an army, I must then entreat him to draw the line. None has yet been drawn; but he must do it before you can give him a verdict. If he will give up, as I am sure he will, that to charge any individual soldier with a murder, is not a seditious libel against the king and government; he must then draw some line. He will tell you, I suppose, whether it is a regiment or a company, or a serjeant's guard, or a corporal's guard; what number, and how commanded it is; that draws the line, and makes it an offence against the king and government, and makes it a seditious libel to charge them with murder. Look after him—see if he draws you that line.—He must likewise, gentlemen, when he has drawn it, shew you this law for it; and then he must prove that the troops I have charged fall within that line; and if he does

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all this, if he draws that line, and establishes it by law, and proves that the troops I have charged are within that line which he establishes by law; then you are bound to give a verdict against me; and if he would do that, I would at once save him the trouble of a trial. If he can draw that line, I will not keep the court a moment.

" Gentlemen, I will be bold to say, that the whole army together, foreigners and natives, with all their officers, and the commander-in-chief,—aye, and the king himself at their head,—is no part of the government of this country; nor can they lawfully put to death. I said, gentlemen, sometime ago, that there never had before been brought a prosecution upon such a charge as this. Now, it is true, that a part indeed of the charge against honest *John Lillburne*, upon one of his trials, was, that he had accused the soldiery of having committed murder; and his words were, (besides the word *murder*, which he expressed at length,) that they had committed murder, by 'shedding the blood of war, in the time of peace:' and he had likewise called their general by name, a murderer. But, gentlemen, it must be remembered, that this prosecution was brought when the army were indeed, *de facto*, the government; when there was neither king nor parliament, but the army governed alone. Then indeed it was natural enough to call the troops the government, and to reckon it a seditious libel against the government, to charge them with murder. Since that time, the Attorney-General will find no such prosecution. However, gentlemen, even then a *London* jury, faithful to their duty, in spite of the judges and the Attorney-General, (who then held the very same language which the Attorney-General holds now,) in spite of all threats, at that perilous time, a *London* jury in this very court, sitting in those places where you now sit, did justice to their own consciences, and they acquitted him, as you must me, unless

unless you choose to exchange the laws of the land, and have military execution take place in this country. A standing army, in the time of peace, is a monster to the free constitution of this country: it has but very lately been suffered; and one of the great arguments that has been urged by those, who have from age to age opposed a standing army, was, that they would be thenceforward used as they now are. The pensioners of the crown, and the friends of arbitrary government, ridiculed such a supposition. They said, it was impossible that such a time could ever arrive. I have read their arguments: they were then afraid of this use of troops; and therefore, those who opposed the establishment of the army, gave it as their reason.

"Gentlemen, the courtiers ridiculed the thought, that such a time could ever arrive, or that the soldiers in this country would ever be so employed. Now, what would our fathers have said, if any chief justice or Attorney-General had at that time hinted, that the soldiers should not only be so employed, instead of the civil officers of justice, to enforce the law upon the subject; but that they should also have a privilege, when they are so employed, which the officers of justice never pretended to? Any man who had broached such a doctrine (before the crown had got a firm possession of a perpetual army), such a man would have been hooted at by both parties: by the court, (not that they would have disliked the doctrine, but) because the secret would have been let out too soon. But now this same doctrine has made the chief-justice an earl, and shall make the Attorney-General a chief-justice.

"Gentlemen, I must entreat you to call to memory, in what light military execution has always hitherto been considered in this country: and shall give you (for it is worth the while) the circumstances of the military

military execution at *Glenco*. (I published the pamphlet, that all the world might see it.) I mention it, because it happened about the time of the first establishment of a standing army (in its present form) in this land. It is but about eighty years since. It happened immediately after the revolution. Now, gentlemen, who were the *Glenco* men? It is certainly acknowledged by all, that they have been in 'the rebellions under *Dundee*, and under *Buchan*.'—The time of this slaughter was in very troublesome and unquiet times, at the moment of the revolution; it was after repeated proclamations of indemnity and pardon. The last proclamation allowed them six months (from August to January) for them to come and take the benefit of that proclamation. About six weeks after the expiration of that term the slaughter happened; and about twenty-five or thirty of them were killed. Now, gentlemen, let us look for the reasons for slaughter: the Secretary of State, *Stair*, gives this reason for that slaughter: these are his words:—'Since the government cannot oblige them, it is *obliged* to ruin some of them, to weaken and to frighten the rest.'—He goes much further.—'It is a great *work of charity*, to be exact in rooting out that damnable sect.'—They were not only obliged to do it; but it was charitable. He goes further:—'for a *just example* of vengeance, I entreat the thieving tribe of *Glenco* may be rooted out to purpose.'—He says it was 'a great advantage to the nation, that that thieving tribe were rooted out and cut off.'—'When you do your duty in a thing so *necessary*, (there was a necessity, you see,)—'to rid the country of thieving; you need not trouble yourself to take pains to vindicate yourself by shewing all your orders.'—'When you do *right*, you need not fear any body.' He adds further, gentlemen,—'Here is a fair occasion for you to shew, that your garrison *serves for some use*.'—These are his instructions; the Secretary of State's in-

structions to the troops:—it was a *fair occasion* to shew that their garrison served for some use. The *King's justice* in this will be as conspicuous and *useful* as his clemency to others.—Can any murder be dressed up in fairer terms? I defy the Attorney-General, with all his abilities and force of language, to say any thing in behalf of this murder at *Lexington* in more specious terms than Secretary *Stair* has done. It was *charity* to be exact—for a *just example of vengeance*.—I entreat the thieving tribe may be rooted out to purpose.—It is a great *advantage to the nation* that the thieving tribe were rooted out and cut off.—When you do your duty, in a thing so *necessary*, you need not trouble yourself to take the *pains* to vindicate yourself by shewing all your orders. When you do *right*, you need not fear any body.—Here is a *fair* opportunity for you to shew that your garrison *serves for some use*.—And after it was done, he says, 'All that I regret is, that any of the sort got away, and there is a *necessity* to prosecute them to the utmost.'—These are the specious reasons given for this slaughter at *Glenco* by the *then* Secretary of State.

"But, notwithstanding all these fine reasons of the Secretary (who should have been very glad to have had it considered as a seditious libel against government, for any man to say that that murder which he had authorized was a murder: he would have been very glad of this doctrine; it would have saved him), he himself acknowledges in a letter, that there was *much talk at London*, that the *Glenco* men were *murdered*. There was *much*, observe, not a little; there was *much talk at London*, that the *Glenco* men were *murdered*. And the parliament of *Scotland*, who took up the matter, said, it had much noise both in *Scotland*, and the rest of the king's dominions.—And, gentlemen, it was a very useful *talk* and *noise*. You will find what it produced. Now, what did the king? reluctantly indeed; but it produced good. What did the Secretary of State? What did

the Attorney-General? File an information for charging the king's troops with murder? (Words and writing have the same effect; rash words, indeed, shall have an excuse where a deliberate writing shall not). No! there was no information for a libel; but the king granted a commission for an inquiry by what pretended authority that murder was committed. The officers of state at that time knew what they were about, as well as they do at this time. There was a *defect* in the commission. Gentlemen, in this first commission which was granted, the officers, who had the drawing it up, no doubt, took care that there should be a defect. A defect there was, and the inquiry did not take place. But the *much noise* and the *much talk* continued; and two years afterwards the king was forced to grant another commission of inquiry; and then care was taken that there should be no defect. And that commission of inquiry was put in force. It was a commission of inquiry to some of the noblest and the greatest in the country, *Scotland*, where the murders were committed. Gentlemen, what did those lords and commissioners? They reported, that the slaughter of the men at *Glenco* was 'a *barbarous murder*;' the very *Billingsgate* language complained of in me. The noble *Scotchmen* voted, and used that very expression, that very ribaldry. The Attorney-General has taken hold of a whole nation by calling it *Billingsgate* and ribaldry. Here is that very word *murder*, *Barbarous Murder*, applied to the king's troops, which offends that gentleman so much in my advertisement. He may know, that I too had a precedent for it.—After the commissioners had discharged their duty, and made their report, that it was a *Barbarous Murder*; the parliament of *Scotland* took it up, and they voted the same *Billingsgate* —they voted that it was a *Barbarous Murder*. And they addressed the king; and in that address they call it a *Barbarous*

barous Murder. But that is not all. They justify the king. They find, upon their inquiry, that the king's instructions had been contradicted: for his instructions were, that the *Glenco* men should be prosecuted in 'the way of public justice, and *no other way:*' that is what they find for the king. And yet they were no friends of those men who were murdered. They did not juſtify them, nor arraign *all* the measures which had been taken against them by finding it a *Barbarous Murder.* But they justify the king; and they acknowledge themselves so well persuaded of their guilt, that they say, 'if the king had proceeded against them according to *law*, and had taken their lives, they would have met with no 'more than they deserved.'—However, gentlemen, I suppose, that in that declaration they were rather hasty: for there were women and children, and old men of 80, killed: and I do suppose, that if they had been proceeded against according to law, the infants at least would have been spared, if the old men and women had not escaped. They go farther. They accuse the Secretary of State, *Stair*, 'as the only warrant and cause' of the slaughter, by his orders. They find that he 'did, in place of prescribing a vindication of public justice, order them to be cut off and rooted up in earnest, and to purpose; and that suddenly, and secretly, and quietly, and all on a sudden. It keeps pace very much with the murders at *Lexington* and *Concord.* That expedition was secretly, quietly, and on a sudden, an expedition at the dead of night. They find that he directed the soldiers, that they 'should not trouble the government with prisoners.'—Now the government cannot be troubled with prisoners; the ministers might; government is not troubled with offenders.—He promises them, that their power should be full enough, and he orders them, that they should 'begin with *Glenco*;' and his words are, that they should '*spare nothing* which belonged to him.'—Mili-

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tary execution differs a little from the laws of the land! They accused the king's troops with murder, for executing the orders which they had received: they addressed the king 'to order his advocate to prosecute them;' and they desired him, 'that he would send the troops home to be prosecuted;' there remaining—(these are their very words) 'send them home to be prosecuted,' there remaining *nothing else* to be done for the full vindication of his Majesty's government from so foul and scandalous an aspersion.—There remaining nothing else to be done! Not an information for a libel, but an inquiry into the matter, and a prosecution of the offenders! Now, gentlemen, then I must entreat you to observe what the troops are capable of doing: and I did intend to have read to you the cruel particulars of that narrative; but it is well enough, you will read it another time at your leisure; and it is your conviction, more than your verdict, I seek; you will know where to find it. You will see in how barbarous, how wanton, how treacherous, and how cruel a manner they slaughtered men, women, and children.

"And this they were told was their duty; and this they thought a proper way (as *Stair*, the Secretary of State, who was a military man; they thought it, as he told them) a proper way to shew that they *served for some use*. Gentlemen, you find then, that by this report and vote, that murder may be committed by the king's troops *without*, and even *against* the king's orders and instructions; therefore, I conclude, that it is not necessarily a libel against the king and the government to accuse his troops of murder. Indeed, I go farther: I say, the king *cannot* give orders for such a murder. It is an impossibility: nor, if it were possible, would such orders justify the act. It exceeds the king's power; and would still, by whomsoever authorised and committed, continue to be a *murder*. Gentlemen, you find too, that a Secretary of State may exceed the king's instructions, so may all those other

persons

persons through whose hands the orders pass from the Secretary of State to the soldiers who execute them; consequently, it is no charge against the king or the government, to charge the troops with murder. But, whether the troops have orders or not, you see that the king's troops, who commit the fact, are nevertheless guilty of murder, as it has been here voted, though acting under orders. Now then, gentlemen, I must beg you to compare that doctrine concerning *Glenco*, (which has never been arraigned,) compare it with this doctrine of the Attorney-General concerning the soldiers at *Lexington*. In the trials of the printers he said, and he says now, that the advertisement is a seditious libel against the government, because it arraigned the employment of the king's troops, and called the victory they had made a *murder*. *There*, he said, he put his finger; 'for this (says he) arraigns all the measures of government; quelling rebels, armed, to call that murder.' Now I beg of you to consider what a number of things are left in this manner of reasoning, and what a number of things are taken for granted. In the first place it does not appear, nor has he offered to prove any such thing, that the slaughter at *Lexington* and *Concord* was a measure of government.—Arraigning all the measures of government! and yet it does not appear that this was a measure of government; I mean, even according to the abused use of the word *government*; I mean, not a measure even of the Secretary of State. But if it had been, how does it follow that, by abusing the measures of the ministers of state, I condemn *all* the measures of government? Suppose I *condemn* one measure of government, how does it follow that I condemn all? May not a man condemn *that* measure, and yet approve all the foregoing? I do not mean to be underſtood that I approve the foregoing measures: I abhor them. But there is nothing in the advertisement before you which condemns the measures of government

government directly or indirectly: it relates to no other measure but merely to *that one;* and you are not to trouble yourselves with what I may like, or what I may not like, but what I have *expressed* in that advertisement which is before. For, in this case of *Glenco*, it is evident that the noble commissioner who voted it a *barbarous murder*, did not condemn *all* the measures of government; for they said, if the king had prosecuted them by law, and taken their lives, he had done no more than justice: it is plain, therefore, that they did not condemn all the measures of government, but only the slaughter by the troops; for they supported the other measures of government, and that at the risk of their lives and fortunes. And, gentlemen, I know, of my own knowledge, and I dare say you do, many persons who have not disapproved of all those proceedings relative to America, who yet did disapprove of that rash and wanton transaction. Then, gentlemen, as for the 'victory,' I think it will not appear to be quite so complete a victory as that at *Glenco!* And therefore you may still see that such a victory as that may be called *a murder.*

"Gentlemen, for my own part, I do not hesitate to declare, that I abhor such victories: victories by subject upon subject! And for such a victory as this, I do declare, I think, that the brows of such conquerors, instead of laurel, should be crowned with wreaths of hemlock. And as for his 'quelling of armed rebels;'—every word is falsehood. They were not rebels, nor *armed*, nor *quelled.*

"They had committed no act of hostility; they had made no attack; they were sleeping quietly in their bed, unapprehensive of any attack upon themselves, at the time that this expedition took place: and that I shall prove. Gentlemen, what reason have you to believe that they were in rebellion, unless the Attorney-General saying so prove them to be in rebellion? For he has offered no proofs of it. It is now—(and pray consider this matter about re-

bels;

bels; though I think it does not matter; for a rebel may be murdered) but consider, it is now two years and a quarter since that slaughter, and yet, to this day, no person whatever has been prosecuted as a rebel. No legal proceeding of any kind have taken place. It is two years and a quarter since that execution upon the rebels, as they are called, and yet no proof of rebellion: and yet you are to believe, that they are rebels! The Attorney-General, if they are rebels, should do his duty: he should prosecute. Now, gentlemen, observe only another contradiction in the doctrines which are brought before you. You will be told, that if they were murdered, the murderers should be prosecuted. You have been told so. Men are not to be charged with crimes; they are to be prosecuted by law. So then we are not to know. We are not to judge of murder when it is committed, till the law helps our judgment.

"And yet, observe, we are to judge of rebellion; which is a crime surely more difficult to be ascertained, and about which there have been more doubts and disputes than about murder. If a man, out of the court, exercises his judgment about a murder, he shall be punished; but he is the same time bound at his peril to exercise his judgment about rebellion; to know what is rebellion, and who have committed it. And yet, gentlemen, I must beg you to observe, that if these very men, executed by military force at *Lexington*, had been rebels, and had been taken in rebellion; had been prosecuted convicted, sentenced, and had been leading to the gallows by the sheriff; if these same king's troops had come and shot them, or run their bayonets into them, they would have committed *murder*. It is not their being rebels; it is not their being sentenced—when they are even leading to execution, a man may commit murder upon the convicts: and these troops would have committed

mitted a murder, had they executed the men even in that condition.

" Gentlemen, the same way of thinking of military execution has prevailed ever since that time. I shall not trouble you to repeat the particulars of the affair of Captain *Porteous* at *Edinburgh*. These gentlemen are so little pleased with military execution upon themselves, that *Porteous* was charged by them with murder. He was prosecuted, convicted, and then he was reprieved after sentence: the people of the town executed that man themselves, so little did they approve of military execution. Now, gentlemen, there are at this moment people of reputation, living in credit, making fortunes under the crown, who were concerned in that very fact, who were concerned in the execution of *Porteous*. I do not speak of it to censure them; for, however irregular the act, my mind approves it. I beg you likewise, gentlemen, to recollect, that most wanton and most wicked rebellion of the year 1745. In what a manner was the victory over them spoken of in *Smollet*'s—' Mourn, hapless *Caledonia!*'—It is known, I suppose, to every body who ever reads poetry. He calls it murder:

" The naked and forlorn must feel
" Devouring flames and murdering steel," &c.

I condemn his act, I do not justify it; but he was not prosecuted for it in that mild reign.

" Gentlemen, it has always been judged a meritorious jealousy in our civil officers; it was in *Janssen*; it was in some other sheriffs, who are still living, when they refused the assistance of the military to execute the criminals. So little proper are the military, with or without orders, for civil purposes, that it has always been thought a praise-worthy jealousy in them to refuse to suffer the military to assist at the execution of criminals: how much less then are they proper to execute them themselves.

themselves. In that prosecution of the king's troops for committing murder in *St. George's Fields*, I was particularly fortunate for this occasion; and I should have reason to rejoice for myself (if I alone was concerned), that I did by that prosecution bring out a doctrine, which I know to be false, and which, if not discountenanced, will be fatal; but I did not draw out a doctrine from the bench which must prevent your verdict against me now. To justify the execution committed in *St. George's Fields*, or to save the delinquents from punishment, the judge declared from the bench that they were to be considered as any other men in the country; that it was a matter of no consequence whether they wore a white coat or a red; that they were on the *same* footing, and might be employed like any other subject. I know that to be false: they are distinguished from other men, not so as to make them *more* qualified for execution, but less. However, this doctrine answered the purpose at that time: but this doctrine, if I am to be convicted, must now be laid aside. The king's troops must no longer be considered as on a level and on the same footing with the king's other subjects. They must now, by the king's troops, mean some persons more sacred, dearer, and nearer to his majesty than any other of his subjects; and to arraign any action of theirs is to be guilty of a seditious libel against the government. Now, gentlemen, observe how rapid is their progression from toleration to equality, and from equality to domination; and from thence you may learn how dangerous is this doctrine. Observe, that first, and for many years, they beg hard to have troops tolerated, merely to prevent surprise, and to be ready against foreign enemies: that is the pretence. The judges next connive at their employment against the subject at home, under pretence of *equality*, and as being merely on the *same* footing with the king's other subjects, and with

with no other difference but the colour of their coats. From this last doctrine (though it includes a contradiction to what follows) the transition has been very short indeed. They are now to be taken *out* of that equality with other subjects; and it is made a crime against the king and the government, to condemn any slaughter which they may commit: and this too without any inquiry, without any proof concerning the nature of the execution, or the manner of the slaughter; or whether it was directed, or was not directed, or by whom directed. And yet, gentlemen, I have learned from Mr. Justice *Atkins* (still going to my only source of law, a state trial), I have learned from him, that 'some judges are of an opinion that before a trial, or presentment, or acquittal, *modo legitimo*, no action upon the case for slander will lie; it not being, he says, ripe for it till an acquittal. By the same reason, he says, it is not ready for an information, which is but the king's suit, the reason being the same in both.' So that, gentlemen, if that be true, this prosecution is too soon as well as too late: too soon, because it precedes the inquiry into the fact, whether murder or not; and too late, for the reason I have already given. And I have no doubt, gentlemen, but that you yourselves will think that the first step to be taken to remove (if there be any) aspersion on government, is to set on foot an inquiry into the murder; and then, if it shall be found a groundless charge, prosecute and punish those who charged them. They say, why do I not prosecute them? Or at least, that I should have prosecuted the murderers, or not charged them with the murder. It is well known, I have always done so when I could; and would do so now if I could. I would prosecute those troops guilty of those murders. But is that to be done? An act of parliament was made,

just before the commission of these murders, to exempt the murderers from trial in *America;* and you will please to remember, that it is not long since an act of parliament was made in *England* for the *more speedy* execution of murderers here. An act was made a few years ago for the more speedy execution of murderers in England; and that because it was thought a means of deterring men more effectually from murder. Now then, what are you to conclude? What are you to conclude even from the circumstance of delay alone? But either that what deters men from committing murder here, will not deter them from committing murder there; or else, that it was not intended to deter men from committing murder in *America.* Now, what would any dispassionate American think even of this single difference between us? This act was made at a time too when checks for their security were more necessary than at any other time; for it was when troops were pouring in upon them. Observe, when *Englishmen* are murdered, as small delay as possible shall be suffered between the fact and the punishment; in *America*, every delay and every possible difficulty. What was this likely to produce but mutual slaughter on both sides? The soldiery were encouraged to murder by a prospect of impunity; and the *Americans*, by that impunity of their murderers, were taught to defend and revenge themselves. I beg you to recollect what happened in *London* only three or four years ago. A foreigner stabbed a coachman in *Palace-Yard, Westminster:* the poor man, in the agonies of death, called out for a knife, that he might do himself justice, (the fact is notorious; I believe it came out upon the trial) that he might do himself justice; as he said, he knew that his murderer would be pardoned! Gentlemen, he was mistaken; his murderer was hanged: but it was a very natural thought

thought for him, after the pardons for murder which had been recently granted. For, take away from men a reliance in the protection of the law, and they will wisely, and justly, and properly, do justice for themselves. The justice of this principle is acknowledged every where; in all countries. There is a signal instance of it. Even a *French* despot found it; and when the king of *France* pardoned one of his own blood for a murder, which he had committed, he publicly bade him observe, that he would likewise pardon any one who should murder him. Now, gentlemen, picture to yourselves the *Americans* of *Lexington* and *Concord* sleeping quietly in their beds, their wives and their infants by their sides, roused at the dead of the night, with an alarm that a numerous body of the king's troops (their numbers, perhaps, augmented by fear and report) were marching towards them by surprise, in an hostile manner—these troops, who were not to be brought to justice by them for any murders which they might commit! What shall they do? Shall they attempt to fly, and leave the helpless part of their family behind them? Shall they stay and submit themselves and their families to the licentiousness of these ruffians!

"I suppose there might be amongst them (as amongst us) some of both these sorts; but however, for the honor of human nature, there were also some of another temper. *They* hastily armed themselves as well as they could; they collected as they might; and they staid, waiting the event, determined not to attack, but to defend themselves from lawless insult, or to sell their lives as dearly as they could. There is nothing in this that will justify the slaughter of them which ensued. And you will please to observe the time which this happened; for it is a very striking fact. As soon as the act of parlia-

ment, exempting them from trial for murder in *America*—as soon as that act got to *America*, and the weather would permit them, the troops did instantly, and without delay, commit those murders with which I now charge them. That act was proposed by the confidential friend of my judge; it was proposed by Lord *George Germaine*; and though the Attorney and Solicitor-General, according to custom, were instructed to bring in the bill, he proposed it in the committee. He mentioned the word soldiers—troops:—but the Attorney and Solicitor-General, or the other gentlemen who are in office, (for I believe their names are mentioned for form, I do not mean to accuse them) those who drew up the bill, knew what was the secret intention of the proposer (not the intention of the government), and therefore no soldier is to be found in the bill; but it is left at large—those assisting in the execution of the orders of the officers of justice; and the *general of the army* was at that time the *civil governor* of the town. Lord George Germaine, whom I have subpœnaed to appear, and who I understand does not mean to attend, was not then, it is true, in office; but he was very shortly after made Secretary of State for the *American* department. You see then, that secretary *Germaine* was more subtle and cautious than secretary *Stair*. Now, if we should prosecute those murderers, how is it to be done? How shall we find the surviving witnesses? Having found them, how shall we get them to *England?* How shall we find the individual murderers? And if found, how shall we bring them hither?

"Gentlemen, do you not plainly see? The act passes that they should not be tried for murder in *America*.—The murders immediately follow.—They cannot be tried by

by the *Americans*;—and, (if the doctrine now attempted by this prosecution is established by you) our miserable fellow-subjects in *America* shall not have even the poor consolation of being pitied here. The murderers shall not be tried *there*: they shall not be charged *here*. But, gentlemen, I shall be told (as I have been) that the *Americans* were rebels. I answer, that it has not been proved. Times of discontent and suspicion are not times of rebellion: suspicion may be groundless, as well as discontent.

"But, gentlemen, you will be told that it was no murder, because there was a necessity for it.—Lord *Stair* said the same for *Glenco*.—Well, gentlemen, if upon the trial of the murderers, it should so appear, that would save them from a verdict of murder. But, till that necessity appears, and is proved, every man is justified in calling it a murder. Necessity shall save the accused from a sentence of death; but it shall not turn the accusation into a libel, because it had a reasonable foundation. Men were killed without the sanction of the law. However, I have never yet heard any necessity, any real necessity, shewn for this slaughter; and I take it that my evidence will be sufficient to make it appear, that it was a voluntary act, not unexpected or waited for, but sought for by the troops. Indeed, the Attorney-General has excluded any such notion; for he had called it a victory! Necessary self-defence (and no further than that reaches is any man justified in putting men to death), necessary self-defence has, I believe, never yet been called a victory. The utmost which that could ever be called, would be a lucky or a happy escape. But necessity did never yet excuse him who attacks, it will only excuse in self-defence.

"The law tells you, you must go back to the wall, If you go and attack, and so invite what follows, necessity will not afterwards acquit you. But, gentlemen, let it be necessity. If it is necessity, I am sure, I am still justified in calling it a murder, by the greatest and (upon this occasion) the best authority for me in this country. For if, when at a critical moment, to save this nation from an universal famine, it was necessary for the ministers of state to act contrary to law: if all men, with one consenting voice, approved this salutary measure to save the lives of men, and both houses of parliament returned his majesty's thanks for concurring with it. I say, if, notwithstanding this, it was necessary, in order to heal the wound which the constitution was supposed to have received, (by the subjects lives being thus *saved* contrary to law,) if it was necessary to have an act of parliament to indemnify those who have put our fellow-subjects to *death* contrary to law! I know indeed his delegated authority, as to affirm that,

——————"'Twere all as good
To pardon him that hath from nature stol'n
A man already made, as to remit
Their saucy lewdness that do coin heaven's image
In stamps that are forbid.—'Tis all as just
Falsely to take away a life true made,
As to put mettle to restrain means
To make a false one.——"

"But the doctrine now held out to us goes as much farther; as revenge and tyranny are more odious, more pernicious, and more detestable than lust. Lust, for its purpose, argued only that it was an *equal* crime to give life contrary to law, as to take away life contrary to law.

But revenge and despotism only make it a crime to preserve lives (which is a better kind of giving life than generation) contrary to law; and deny it to be any crime to take away lives contrary to law, unless it be also, at the same time, contrary to the inclination of the tyrant. Admit then, gentlemen, if you please, admit the motive for killing those our fellow-subjects at *Lexington* and *Concord* to be as *necessary* as you please; go farther, admit it to be useful, admit it to be highly meritorious:—yet I hope the warmest admirer of such kind of executions, the most thirsty after *American* blood and confiscation; I hope he will not insult our understandings, by contending, that it could be more meritorious, that it could be more useful, that it could be more necessary to kill men in support of the measures of some particular ministers, than to save this whole country from famine. Our law, gentlemen, has not called such an action as that illegal *embargo on corn* by any *specific* name, as it has called the illegal putting of men to death by the name of *murder*. Suppose then (what indeed was freely done) that any one, for want of a *specific* name, had called that necessary embargo on corn, an *illegal* action: as when we say *murder*, we mean *illegal* slaying. Now then, I ask (and I hope the Attorney-General will tell us), would it have been a seditious libel against the king and the government, to have called that measure *illegal*, (for want of a specific name) which the *real* government itself, the legislature, by the indemnifying act declared to be illegal? Whether the Attorney-General may pretend this or not, I cannot tell: but I am sure my judge must direct you otherwise.—He cannot for shame pretend, because he forced an act of indemnifying these men, who themselves thought the act sufficient justification of itself; he *forced* them to be pardoned, to be indemnified by an act

of parliament; and therefore I am sure that he *cannot* pretend that *utility* and *necessity* shall justify the *deaths* of men, when he would not permit *utility* and *necessity* to be sufficient, without an act of indemnity, to justify those who had illegally saved this whole country from famine. But, gentlemen, I am ashamed to have said so much upon a point so clear. It is not because I am tired, or because I am failing in many arguments equally strong. But I disdain to take up more of your time; or to say a word more upon this subject. I will leave it just where it is. I will leave it to the reply of the Attorney-General, and the direction of the Judge."

When Mr. HORNE was brought up before the Court of King's Bench, on Nov. 24th following, he made the following speech previously to his receiving the judgment of the Court.

"My Lords,

"Though your lordships' judgment is to be pronounced upon myself, I shall attend to hear it with the indifference and curiosity of a traveller; which I was early instructed to do in such circumstances as these, long before I could imagine I should ever be in them. My lords, I am a little the more at a loss to address your lordships, because (that I am not ashamed to be laughed at for my disappointment,) I acknowledge that I came this morning into the court, in the full assurance that I should find less difficulty to go out of it than I did to come in. My lords, I had no notion at all that *evidence* could supply the defects of the *information*, or that it would be attempted to be so supplied by evidence. I did not, it is true, at the time I objected to the deficiencies of the information, I did not, amongst other things, add *evidence*. I believe

I am time enough now to move any thing in arrest of judgment; and if I am, I desire that your lordships would understand me now, to object to the supplying of the defects of an information by any evidence whatever. My lord, I apprehend that your lordship had directed Mr. Attorney-General and myself (and I ought, if what he has said of me be any thing like truth, to beg his pardon for coupling my unworthy name with his,); but, my lord, I thought that he and I were directed, if we could, to produce precedents. I own to your lordship I did not well understand the direction when I received it; because I had laid before you a *sacred principle*, with which I was much better acquainted than with precedents; and for one of which I would willingly give up all the precedents that ever existed. My lords, I shall, no doubt, be very irregular in the order of what I shall say to your lordships; and I should not have said a word, if there were not in Mr. Attorney-General's harangue some things that might easily stir a man to anger, if he was not as little susceptible of it as I am. My lords, I feel not the least anger at any thing that has passed. The gentleman on the trial had stripped me of common sense; but he allowed me a *sort* of understanding. My lords, he shifted his ground in his reply. He first, out of kindness and compliment to me, supposed what I had written to be beneath common sense. At first I was a fool; at last I was a madman. My lords, at first he thought it—(I forgot his expression), but he thought it candor (I think he said) to the names of persons alluded to, though distantly, to suppose that what I had written was false. To save others from some scandal of imprudence or impropriety, he thought it candor to impute falsehood to me. My lords, when that was proved to be true, he only said,

said, that he did not mind the matter; indeed, which ever side of the case I took, nothing could mend the matter. It is not my business, my lord, to take the smallest notice of what fell from your lordship; nor shall I mention a number of things, which I might justly be permitted to mention, of wilful and gross misrepresentations of the evidence upon the trial: I should not have mentioned it at all; but Mr. Attorney-General has hinted, though not specified, misrepresentations by me of the proceedings of the trial.

"My lords, he has endeavoured to alarm me with monstrous fines, with long imprisonment, with infamous punishment. My lords, infamy is as little acquainted with my name, as with that gentleman's or with your lordships'. I feel no apprehensions from the pillory. I do feel some little pain, that a gentleman, taking advantage of my situation, should say and offer those things, unfounded in appearances even of truth, against me, which neither he, nor any man like him, dare to insinuate in any other station but this. He has attempted likewise to insinuate, my lords, a species of robbery. When he did so, he was guilty of falsehood. He said, that my witness did not prove that the 50*l.* was paid into the bankers. My lords, he has literally proved it. My lords, he represents me as speaking the language of—'if you dare to punish me;' and he says, 'it is a language addressed to the lowest of the mob.' Indeed I think so too; but it is his own language, not mine. My lords, he has dwelt upon my occasions, my desperate situation, my want of character and fortune. My lords, it is my misfortune, that from my cradle I have had as effeminate an education and care, and course of my life, as Mr. Attorney-General. It is my misfortune, that there was not

not a greater want of fortune: and as for my occasions, my means have always been beyond them. I should rather, my lords, if I was speaking in extenuation, or to mitigate your punishment, I should rather close in with Mr. Attorney-General, and acknowledge myself that desperate, helpless wretch, that he has represented me. Perhaps it would be the most effectual motive to your lordships' compassion. My lords, I never in my life solicited a favor; I never desire to meet with compassion. My lords, he has talked to your lordships of my patrons. I have had in my life, and very early in my life, the greatest of patrons; aye, with all their power, greater than any that now hear me. My lords, I renounced my patrons, because I would not renounce my principles; repeatedly, over and over again, of different descriptions, and in different situations. My lords, I am proud, because I am insulted; or else I certainly should not have held any of this language. My lords, Mr. Attorney-General, through a blameful carelessness, has told you a story of a theological, polemical dispute between myself and a parishioner. I can easily conceive that he let himself fall into that mistake, for the sake of a smile from your lordships and the court, upon the *reverend* gentleman. But in this, like the rest, my lords, there is not a syllable, not the smallest foundation of truth. I never had a theological, polemical dispute. My lords, I am free to acknowledge, that no theological disputes that ever I read, and I have endeavored to read all that ever happened, none of them ever interested me in the manner that the present disputes do interest me. My lords, I never was made to be a martyr. I have opinions of my own; but I never intended to suffer for them at the stake,

"My

"My lords, he has endeavored to insinuate, that all that I wrote, and all that I said, was for the sake of a paradeful triumph over justice: and he has talked again and again of the mob. My lords, the mob have conferred no greater favors upon me than upon Mr. Attorney-General. I have been repeatedly followed by very numerous mobs, in order to destroy me, single and alone, for a great length of way; not once, or twice, or three times, but four and five times; two or three thousand at my heels. I am sensible of the ridicule of the situation, ever whilst I mention it. These are the only favors that I ever have received from the mob; these are the only favors that I have ever solicited; and I protest to your lordships, I had much rather hear the mob hiss than halloo, for the latter would give me the head-ach; the first gives me no pain. My lords, I have heard of those who have expressed more wishes for popularity than ever I felt. I have heard it said, and I think it was in this court, that they would have popularity; but it should be that popularity which follows, not that which is sought after! My lords, I am proud enough to despise them both. If popularity would offer itself to me, I would speedily take care to kick it away. My lords, as for ambition, and bodies of men, and parties, and societies, there is nothing of it in the case. There is no body of men with whom I can think, that I know of. There is no body of men with whom I am connected. There is no man or men from whom I expect help, or assistance, or friendship, of any kind beyond that which my principles or services may deserve from them individually. Private friendships I have, like other men; but they are very few: however, that is recompensed to me, for they are very worthy. My lords, Mr. Attorney-General

General has said, that I represented imprisonment as no kind of inconvenience to me. As no kind of inconvenience, my lords, will not certainly be true; because the great luxury of my life is a very small, but a very clean cottage: and though imprisonment will be so far inconvenient to me, the cause of it will make it not painful. My lords, I find that only I have a *sort* of understanding, very different from that of Mr. Attorney-General; but my notions of law, and my notions of humanity, are equally different. My lords, between the time that I had the last honor of appearing before you and the present time, it happens very unfortunately for Mr. Attorney-General that he has proved, that not only my notions of law and decency; but my notions of propriety and humanity, are widely different from his: and I mention it, my lords, because it goes immediately to the doctrine now attempted to be established. Mr. Attorney-General has heard a person, as great as himself, between that time and this, justify the legality, the propriety, the humanity of the tomohawk and the scalping knife. Between the last time I appeared here and this time, these have been the sort of *king's troops* justified, by a high officer of the law, to be employed as legal, proper, mild and humane.

"My lords, Mr. Attorney-General has said, that I declared upon the trial, that I had a certain employment which made it *necessary* for me to be confined, as long as your lordships should or would confine me. That is not true. My lords, I did say I had an employment, had some thing to do, that would confine me to my room longer than your lordships would confine me. I believe I said more—I neither intended when I said it to affront you, nor will attempt at this time to appease you: I said longer than your lordships *dare* to confine me; those were the words: and I said it; because I did believe, and do

do still believe, that your lordships dare not wilfully do injustice. My lords, as for that certain employment, I did not say it was *necessary*. It is an employment of amusement merely; an employment that I meant to make public; but not for the sake of gain or praise. My lords, when first I began my life, I was encouraged to worthy and to virtuous actions, by the temptation of praise. I have long since learned, my lords, to be able to do those actions which I think virtuous, in despite of shame. My lords, Mr. Attorney-General has done what I have before heard attempted to be done with very great sorrow: he has attempted to re-instate the Star-Chamber. The fault he finds with it, is only its *rankness*,—before the prosecutions grew so rank in the Star-Chamber, and which *rankness* caused it to be abolished. I don't recollect the words of that act by which it was abolished; but I am sure that its rankness alone is not the reason given. If the gentleman would lend me his memory, I should then repeat that none of the powers, nor none like them, (your lordships know better the words, I don't recollect the words,) but nothing like them was ever to be put in use again, in that or in any other court, as well as I can remember. Mr. Attorney-General has talked of the personal conceit of *Tutchin* concerning authors. I thought myself, till a strong zeal made me act otherwise, as little likely to become an author as any of the gentlemen who hear me. I have never been a contractor with any newspapers; he knows I have not. If I desired the printer of the *Public Advertiser* to give me up always to justice, my lords, I cannot easily conceive how Mr. Attorney-General could find any thing to justify his oratory upon that subject. Is that a defiance of a court of justice? Is that flying in the face of the justice of the country? To be willing to abide its sentence; not to withdraw

withdraw myself from its censure; not wish even to avoid any inquiry into my conduct; is that to be, that bold-faced audacious man, that defies the justice of his country? My lords, if it is, I can only again deplore, that a gentleman, who must have great understanding, and great talents and abilities, from the office which he holds, that the understanding of that gentleman should be so very different from mine. My lords, I have already appeared in this situation often enough; and if I had, as he imagines I have, any luxury or pleasure in holding myself forth in public; if I had, it would long before this have been satisfied.—There are many other things which I might say to your lordships; but as I trust, and fully trust, that I shall still find a remedy, my lords, against the present decision, I shall forbear saying one syllable in extenuation of what the Attorney-General has been pleased to charge me with; and leave your lordships to pronounce your judgment without the least consideration of me; without the smallest desire that you should abate a hair from what you think necessary for the justice of my country. I shall leave it entirely to your lordships' discretion."

Mr. Justice Aston then pronounced the sentence of the court, which was, That he do pay a fine to the king of 200 pounds; be imprisoned for the space of twelve months, and until that be paid; and that upon the determination of his imprisonment, he should find sureties for his good behaviour for three years, himself in 400 pounds, and two sureties in 200 pounds each.

The two following Speeches of the Hon. C. J. Fox, and the Hon. THOMAS ERSKINE, (now Lord ERSKINE,) on May 20th 1791, the time the following Bill was moved for in the House of Commons, we think proper to lay before our readers in this place.—Though not delivered in a Court of Justice, they may be said to come, in a great measure, under the head of Judicial Eloquence, and will be found highly important, as regarding the Liberty of the Press, and consequently of the British Subject.

A BILL,

ENTITLED,

An Act to remove Doubts respecting the Functions of Juries, in Cases of Libel.

* Whereas doubts have arisen, whether, on the trial of an indictment or information, for the making or publishing any libel, where an issue or issues are joined between the king and the defendant or defendants, on the plea of Not Guilty pleaded, it be competent to the jury impannelled to try the same, to give their verdict upon the whole matter of issues.

* When this bill was first brought into the house of commons, the following preamble stood part of the bill, but was afterwards omitted upon the motion of the Attorney-General: "Wherens in all criminal prosecutions by indictment, or information, where an issue or issues are joined between the king and the defendant or defendants, on the plea of *Not Guilty* pleaded, the jury impannelled to try the same, have always had, and by the law and constitution of England were intended to have, and in their discretion to exercise, a jurisdiction over the whole matter—put in issue between them."

Be

Be it therefore declared and enacted, by the king's most excellent majesty, and by and with the advice of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, on every such trial, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter, put in issue upon such indictment or information; and shall not be required or directed, the court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication, by such defendant or defendants, of the paper charged to be a libel, and of the sense ascribed to the same, in such indictment or information.

Provided always, that, on every such trial, the court or judge, before whom such indictment or information shall be tried, shall, according to his or their discretion, give their or his opinion and directions to the jury, on the matter in issue between the king and the defendant or defendants, in like manner as in other criminal cases.

Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases.

Provided also, that, in case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground, and in such manner, as by law he or they might have done before the passing of this act, any thing herein contained to the contrary understanding.

Mr. Fox began his speech by observing,—"Every member of this house is so well acquainted with the

duties of the house, that I need not take up their time with stating, that one of the most important of their duties is that of watching over the executing government of the country, in which is included, as an essential part, the judicial proceedings of the kingdom. It is not necessary for me to use words to describe the duty, nor to shew that whenever the house thought it necessary to inquire into the administration of the judicial branch of the executive government, the house did go out of its just and constitutional province. It was, of all the constitutional duties of that house, one of its most wholesome and necessary: and I trust, that it would not be thought that the commons house, by interfering so far as to take notice of what might have been transacted in the courts below, were raising an unjust prejudice in the minds of men, and unhinging the settled reverence and opinion of the country.—Nothing could be so unfair as to say, because he watched the conduct of those entrusted with the execution of the judicial department—that he was faulty if he should state what appeared to him to be unexplicit or erroneous—or that seasonably declaring his opinion was defaming the courts. Nothing could be more untrue, or more unjust, than this mode of reasoning; for if it were to be held as a doctrine, that it was giving an unnecessary alarm to the country, to take notice of, and animadvert on, what occurred in the courts in the beginnings of error, or in the progress of it, what must be the consequence? That they must either suffer abuses and errors to accumulate, until, by their own grossness, they had inflamed the nation, and produced the natural consequences of authority and justice abused—or be subject to the imputation of unnecessarily alarming the people, and unhinging the influence of the courts. Now, nothing in his mind could be more

more true than this proposition, that the true authority of the courts was to be maintained by convincing the people, that the inquisitorial superintending power of parliament was constantly vigilant; that it was ever on the watch, and that, whenever it observed any thing which called for explanation or connection, the house stepped forth to the discharge of its duty, and, by its seasonable admonition, restored love and confidence to public opinion, and fixed the authority of the courts on its true basis —that of reason and justice.—It was here that he meant on that day to draw the attention of the house to the consideration of more than one point, flowing from decisions in the courts; but in doing this, it was certainly as true, that he had no idea of any blame to be imputed to the courts on the score of abuse, or of corruption. He had observed some ideas gradually springing up, which he thought demanded the interference of that house, and upon which they might reason with perfect freedom, and with a perfect regard to the dignity of the learned judges, who now filled the seat of justice. The first point was, the conduct of the courts on trial of libel. He would not take the occasion of indulging in any declamation, on the invaluable advantages of the freedom of the press. He would content himself with a single observation on the subject. Let gentlemen look round the world, and he would be bound to say, that whoever observed the present state of general intelligence and manners—of the science of political government—of the improvements in the useful arts of life; would acknowledge, that the blessings, which man owed to the liberty of the press, were beyond the reach even of the press to describe. He was no friend to, much less advocate for, its licentiousness. But he was not among those who, because it was occasionally abused, and because it must always be

subject to abuse, would stifle the press, by subjecting it to previous restraints; or even in instances where conviction of guilt was made, he was an enemy to punishments measured severely; for this plain, and as he thought substantial reason, that a popular government should ever manifest a disposition to protect and cherish the press. That it should be unshackled and free, he drew from the experience of all nations who had unwisely loaded it with restraints. They had proved that, by such fetters, they had deprived their country only of the good uses of the press, but not of the abuses. They had had the licentiousness, without the just liberty. Calumny had found the means of spreading its rancours, where wholesome and useful truth was stifled. It became, therefore, a government that regarded the people, to take measures to secure to the press its just liberty—providing as well as they could against its licentiousness. In the present enlightened age, he certainly had no reason to fear, that previous restraints would be attempted to be imposed on the press. The good sense of the times would not brook an *imprimatur*, or previous securities of any kind of good behaviour—and it was not in such way that he dreaded any danger to the press. The only danger that he dreaded was by a series of punishments, severe beyond the crimes, by straining the law to meet cases, which, in the clear eye of reason, ought not to be deemed libellous—by abridging and narrowing, until they should finally extinguish the power of juries in these cases; by making the constitution so doubtful, as to take from the people their security—and by thus indisposing all men from engaging in pursuits, which subjected them to penalties different from every other subject of the empire, although it was an employment calculated to render to their country the greatest possible good. That certain doctrines, and

even some decisions, were calculated to produce this very fatal effect, and that they had given serious subject of alarm to thinking men, he trusted he could prove to the house. Perhaps it might be said, that we must have reached the just point of the liberty of the press, because we had gone beyond it. This was certainly not true. It was not fair to say, that, because calumny and slander daily sported with impunity in the daily prints, that no character was so sacred as to be secure from their licentiousness—they enjoyed the just liberty of public discussions, and that the press had the true and desirable freedom for which he contended. The fact was not so—for though, from a variety of reasons, there was a facility of private abuse, and though slanders might be published freely against him and others, there was not the same freedom and security in discussing the acts of government, and the public conduct of ministers;—the private conduct of ministers and of public men—their domestic manners—and that which related to them personally out of their offices, stood precisely on the same ground as other men; but he contended, from some recent decisions, and much more so, from some doctrines which had obtained in the courts, that men now were not free to discuss the public acts of government, and of public men which they ought to be, and which the constitution of a popular government required that they should be. He would endeavour to illustrate this, by arguing from individual instances to the general position.

"Last year the Spanish armament naturally agitated the nation, and all men speculated upon it, as it was their undoubted right to do. Some strictures appeared in a newspaper on the probable cause of the armament; upon which government directed a prosecution to be commenced. The man pleaded guilty, or, which was the

same thing, suffered judgment to go by default. A sentence was passed by the court of King's Bench, which he thought inordinately severe, and disproportioned to the offence. The offence was a supposition that the pretended purpose of the armament, Nootka Sound, was not the real purpose. Now, it would have appeared to him, that nothing could be more perfectly free from libel, in his idea of what a libel ought to be, than such a supposition. His first wonder was, that the printer should have suffered judgment to go by default; and he next was astonished that he did not make a motion in arrest of judgment. This struck him on the first view of the sentence, and made him turn his attention to it; that the sentence, which was imprisonment for one year, and to stand in the pillory, made the same impression on every other man at the time, he sincerely believed.—That it was the general feeling and sensation of the bar, that it was inordinately severe, he had the best information; and therefore, it was a matter which had very much agitated the minds of gentlemen. He had read the libel with all the care he could give the subject. It was a libel upon which a writ of error could not lie from the circumstances of the conviction, and which therefore put him to considerable difficulty, as to the manner in which he could treat it. For though the passage, to which he had alluded, was clearly not libellous, yet the paragraph contained other matter, which, as the printer could not be suffered to justify, must have been called libellous. For instance, it insinuated that the king's ministers wanted prudence, policy, and spirit—terms which, in the construction of a libel, might have convicted the printer—and which, if applied to ministers on their new scheme of the Russian armament, might be called a libel, as the person who said it in print would

not

not be permitted to justify. Whether, in the present state of things, it was consistent with the dignity of his Majesty's ministers to prosecute for such libels, he would leave to the good sense of the house. But he was willing to admit, that, in the present construction and practice of the courts on libel, charging the king's ministers with want of prudence, policy, and spirit, was a libel; and although this was one of the counts of indictment against Luxford, yet there was another count, the doctrine of which he completely and totally denied. He wished on technical points to be understood, as speaking with great diffidence; but he trusted he should make his ideas clear to the house. In the declaration for a libel, the words maliciously and seditiously were essential, and this was to be made out by filling up the inuendos. In doing this, he held it to be indispensable, that an inuendo should be matter of explanation—not of addition. Inuendo clearly signified that which we expressed by the words "meaning thereby—*id est scilicet*—importing," as for instance, that *K* means *King*—that, in speaking of such a man, it was said ironically, that on such occasion, he had not acted as a coward; meaning thereby that he had acted as a coward.—But in this declaration, another signification had been given to inuendo—that of *purposing*.—Now inuendo never meant in a libel, nor could mean purposing, but always importing.—And he complained, that, in the third count of the declaration against Luxford, an inuendo had been inserted, of a kind perfectly and completely unjustifiable. After reciting the terms of the writing—that the armament was calculated to make a deep impression on the minds of the French cabinet, national assembly, and people in general—it said—inuendo—'meaning thereby to alarm the king of France and his minister, the national

tional assembly, and people in general, and excite them to hostility against our sovereign Lord the King,' &c.—Now these words were any thing but an inuendo.—It was the clear province of the jury, according to the doctrine of the day, to fill up the inuendos; but it was the province of the court to draw the legal inferences. Admitting for a moment that such was the distinct provinces of judge and jury, see what must be the conclusion from this very count. By putting it into the court, it completely deprived the poor man from moving an arrest of judgment. For if he had come and said, 'This writing was not a libel; the inference that you have drawn from it is not a fair inference, it is not calculated to excite the King of France to hostility, and it was not written with that view'—what would have been his answer? You cannot avail yourself of that plea.—It is not an inference, but an inuendo.—It is contained in the body of the record, not drawn by us from it—and you have submitted to its truth, by suffering judgment to go by default. Here was the difficulty of which he complained; and, that he might make his argument perfectly clear, Mr. Fox read the whole of the count, in which he shewed the true distinction between an inuendo and an inference. For instance, when the indictment repeated the words of the writing.—They, (meaning the cabinet, national assembly, and people of France) will sooner think that this armament is destined against Brest and Toulon (meaning the ports of Brest and Toulon in France), than against Cadiz and Barcelona (meaning the ports of Cadiz and Barcelona in Spain).—These were fair and legitimate inuendos; but when it proceeded to say conclusively, 'meaning and intending thereby to have it believed by the ministers, national assembly, and people of France, that the said armament was really to be directed

reeted against Brest and Toulon, and thereby exciting them to hostility,' they substituted an inference in the place of an inuendo—an inference which might or might not be true, and on which surely it was fit that the person should have the benefit of deliberation. But how was he to make his defence against it as it stood in the indictment? If, instead of pleading guilty, he had objected to the inuendo, the court would have stopped him.—It was not an inuendo, it was a legal inference; and the jury had nothing to do with it.—It was the province of the court to find the inference. If, on the other side, he had not objected at the trial, but had moved for an arrest of judgment, on the ground that it was not a fair inference, but an inuendo, the truth of which he had admitted by not objecting to it, and that it was part of the record on the verdict of the jury. Such was the situation of this unhappy man, under this mode of introducing this strange count into the indictment. There were other counts in the indictment, on which being also convicted, he could not receive any benefit from this, although this did tend so directly to vitiate the proceeding. If there had been no other count than this, he would not have hesitated to say that the court of King's-Bench had made a strained construction, and an improper unwarranted inference. But as there were other counts, a variety of observations occurred to his mind, and objections arose to every measure which it was suggested to pursue. To move an arrest of judgment was impossible, for the reasons he had assigned; and to make complaint in that house, unless he had reason to believe that there was a corrupt motive, it was certainly not a course which he could pursue. He acquitted them most completely of corrupt motives, and suspected only that they acted from error—and that they found themselves in the same difficulty

culty which the practice of the court daily shewed that they were put to in cases of libel. This was the ground on which he came to the house; for, seeing the difficulties of the court, the house could not, and ought not, to stand by and see either an innocent man punished, or a guilty man punished, beyond the measure of his guilt, because there was a defect in the practice of the courts on the subject of a libel, from which, without the interference of parliament, the judges could not extricate themselves and their country. Perhaps, in the present case, an address to the King, to pardon what remained of the sentence of John Luxford, and to relieve him from the pillory, might be the most proper way; and if the house should agree with him on the propriety of going into a committee, that might be one branch of their consideration. He knew there were those who held it to be a maxim, that the house should never interfere with the administration of justice, except in cases of notorious incapacity, or of direct corruption. He did not agree to the wisdom of this opinion, because he thought it at all times better to apply a preventative than an example; and he was sure, that while the house maintained that respect which great and learned men in the seat of justice were likely to obtain from them, their interference, when they saw cause to declare what was the intention of the legislature, or to make it more explicit where it was found obscure, would never unsettle the public opinion, but, on the contrary, strengthen it.—But this distinction between the inuendo and inference had led his mind to inquire farther into the subject. If it was an inuendo, according to the practice, the jury were to decide on it; if it was an inference, the court was to do it. He saw no good reason for this distinction. If, as a juryman, he was capable of filling up the inuendo, and finding that such

such a thing stood for, and meant such a thing, surely he was capable also of drawing an inference—that is, of drawing a fact from a fact—for, he observed, that, in these cases, what was construed into a legal inference was no such thing, but was an inference simply of one fact from another. It was so in this case of Luxford; and this led him to inquire, how it had come that this question of law and fact was thus split and divided. He had looked into books—he had found that, seven years ago, his honorable friend, in the memorable case of the dean of St. Asaph, had illustrated the true rights of the jury in so clear and so masterly a manner, as to render it at once impossible and unnecessary for him, or any man, to say more on the subject. He would not say all that occurred to his mind on the subject of the memorable stand made by his honorable friend, in which, as he conceived, he had so completely triumphed; but, thinking that he had so triumphed, he had taken some pains to inquire into the other side of the question, to see whether his honorable friend had overthrown a giant, or, at least, that he had been wrestling with a man. For this reason, he had searched into the authorities; and he was ready to own, that he thought great authorities were arguments. All authorities, however, must, at one time or another, rest on the foundation of reason; and he thought it a wise and advantageous thing, that all authorities should be tried by that test, for the purpose of establishing in the public mind just reverence for authorities, which could only be done by shewing that no authority was to be established, without its having first undergone the inquiry and examination of sense and reason. He found then that there was not a slight shade of difference only between his honorable friend and the opposite side; but they differed *toto cœlo*. Nothing could be more completely

completely opposite than the two doctrines. The court of King's Bench held in Shipley's case, that the whole question of law belonged to the court, and the question of fact only to the jury.—The direct reverse was held fairly and handsomely by his honorable friend; and he contended that the jury were masters of the whole case, whether law or fact. They came, therefore, fairly to issue. In examining the doctrine, he found that it was not of modern date, though, for a long time, and till lately, it had slept. The first instance that he had traced of it, was in the case of a man not unknown to history—in the case of John Lilburne, in 1649. He was indicted for writing a treasonable paper. Lilburne addressed the court in very coarse and homely language, which gentlemen would not approve in the expression; language in which he said, that the jury were every thing, and that judges were cyphers!'—But what was the answer which it provoked from the bench?—'What damnable and blasphemous heresy!' was the exclamation of judge Jermyn. The jury, however, proved themselves every thing, for they acquitted Lilburne; and, when again prosecuted, he was again acquitted. Such was the conduct of the jury in those days; and thus all the power of Cromwell, backed by all the despotism of the judges, had not been able to procure currency to the doctrine; for, some time afterwards, it was allowed to sleep; the reason of which, if he might hazard a conjecture, was, that a licenser being appointed in all the time from the Restoration till after the Revolution, the case was altered. The judges had nothing to do but to inquire, whether a paper was published without the authority of the licenser? But, since its revival, he observed, that it had experienced the fate of all indefensible propositions; there has been much caviling about it, and about the manner in which it would

would be brought to bear. When the general issue was joined, a general verdict was, in his mind, the clear and only intelligible conclusion that could be made. It was, in his mind, a solecism to say, that a special verdict could meet a general issue. A man was accused of printing and publishing, maliciously and seditiously, a libel: he pleads the general issue of not guilty, and the jury are directed to lay out of the case the malice and sedition, and to find simply that he printed and published. What was the general issue?—Not guilty of printing and publishing the paper maliciously, seditiously, &c.—He did not wish to lay any particular stress on the word *guilty*; but surely to say, that a man was to be found guilty before any inquiry was to be made into his guilt, was a solecism in terms.—To find a verdict of guilty, was a most serious thing, whatever might be the conclusion: it was inconsistent with the proud and high situation of an Englishman, whose right it was not to be called guilty, until he was proved so to be by his peers.—Going a little further, he found an universal acknowledgment by all the authorities for this monstrous doctrine, which, in his mind, was conclusive against themselves, *viz.* that the jury had the power to bring in a general verdict of not guilty.—How could they do that, but by exercising the right of judging of the whole matter? This Raymond, Reed, Mansfield, Buller, and every one of the judges who argued for this doctrine, constantly admitted, and always told the jury they might find a verdict of not guilty. Now, though he would not be so childish as to argue, that, in all cases, right and power were convertible terms; yet ye could not agree with judge Ashhurst, that the rights of juries so exercised would be like the rights of highwaymen and robbers.—He thought that the constitution, which lodged in juries the right of exercising

exercising their discretion to acquit on the whole matter, gave them also the right to exercise their judgment to convict generally: and that there could be no conviction without examining the two sides impartially. The law adage, therefore, *ad questionem facti non respondent judices, ad questionem juris non respondent juratores*, was, in his mind, totally inadmissible; and all the legal analogies by which it was attempted to be supported, forsook and left them defenceless. It was said, that in an indictment for murder, if the judge saw that the evidence amounted only to homicide, he advised the jury to find a verdict of homicide.—True—but did not the very advice of the judge prove that the jury had the power?—Who advised a man to do a thing that he had not the power to do? The jury were clearly in possession of the right, and the judge assisted them in the exercise of that right. It was the same in felony, and even in high treason, at least in one branch of it. In every thing, except in a libel, the jury had the power; but libel, the lawyers said, was an anomaly.—It was an anomaly, indeed, if such was the constitutional power of the court: but all his respect for Lord Mansfield could not make him cherish for a moment the idea, that any thing so abhorrent to human reason and to justice could be law. In other special verdicts, the court must give an opinion; in the case of libel they must not, and never did, unless a motion was made in arrest of judgment. What was the situation which this put the prisoner into? The jury find the publication simply, but do not find that the prisoner is guilty. The record is made up—he moves an arrest of judgment—when the court put him to the proof of his innocence—they put the *onus exculpandi* upon the prisoner, although he has not been proved guilty. Here was an *onus* unheard of in criminal judicature—that instead of the person accusing

ing being bound to prove the person accused guilty, the person accused was to prove himself innocent! It was monstrous and absurd.—Was it really a principle of the law of England, that a man should be compelled to prove his innocence, without being first put on trial to be proved guilty? Yet such was the assertion that they made; and the person accused was to prove his own innocence before his peers, but was to make this defence before the bench of judges only. The authorities themselves were all inconsistent—and their arguments were all inconclusive. In the case of Shipley, the counsel were allowed to go into argument, to shew the heiniousness of the libel—magnifying and inflaming the crime before a tribunal, that, at the same time, the court said, had no jurisdiction of the guilt. Why was this suffered?—Because the counsel for the dean had been suffered to use argument in exculpation—that is to say—one disorder was to be justified by another. Surely to be consistent with their own doctrine, eloquence both in exaggeration and in exculpation were equally improper; for if the jury could not decide on the crime, they should not have been troubled with the eloquence on either side. The noble judge seemed to be fully aware of this inconsistency, and he descended to make an apology of a very curious kind.—That in such trials, the counsel were suffered to magnify the crime, to satisfy the minds of the standers-by. A more extraordinary reason for any practice of the courts he had never heard; and it proved to what shifts even great authorities would have recourse, when they felt the inconsistency of their doctrine with the simplicity of truth. In saying this, he begged leave to be understood that he had high respect for the Earl of Mansfield, and for his decisions, generally considered; but he evidently saw, that, in this dilemma, even his great and fruitful

mind could not suggest good arguments in defence of a doctrine so untenable. He observed some shades of difference in the argument, too, between him and his colleagues. Counsel for a prosecution might adduce argument or evidence to rebut argument for a prisoner, and this the jury might hear and weigh—weigh against what?—Surely against what they had heard on the other side; for to allege that the jury could weigh the presumptions on the one side, without weighing the presumptions on the other, was to say, that men had a confusion of intellect, upon which any absurdity might pass. It was also said, that though part of a printed paper only might be stated in the indictment to be libellous, the jury might, to make up the minds, read and examine the context.—Why?—To bring it in explanation, so as to satisfy their judgment as to the guilt or innocence of the prisoner. They could have no reason to look at the context, if they had only to say specially guilty of publishing only; but they did it to decide honestly on the whole matter. All those admissions of the great authorities proved, that they were incoherent on the subject—that their arguments were disjointed and insufficient—and that, in truth, the whole doctrine rested simply upon names, and not upon reasons. He owned there were splendid names.—In one case Lord Chief Justice Holt expressed himself for the doctrine. The same great authority, however, in another case, *The King* v. *Tutchen*, was as clearly on the other side: for he stated the whole criminality of the libel to the jury, and said, 'Can you then say, that it is not criminal to say so?' This was the only great authority before Raymond in the year 1731, and the doctrine was really to take its date from that time, 60 years ago. The question now was, whether a doctrine of that age was to be supported against reason and common sense, as well as the undoubted

undoubted rights of Englishmen to be tried by their peers? The principle so absurd and untenable, so opposite to the fundamental notions of justice, and of human reason, had not been acted upon, and adhered to, by any one man invariably. Even Lord Mansfield, its great supporter in the present day, had not adhered to it; for in the charge which he gave, in the *King* v. *Horne*, as appears upon the authority of notes put into his hand by a most respectable gentleman, that he addressed the jury in these words: 'You will judge whether it conveys a harmless, innocent proposition, for the good and welfare of this kingdom, the support of the legislative government, and the king's authority, according to law; whether it is not denying the government and legislative authority of England, and justifying the Americans, &c.—and if it was intended to convey that meaning, there can be little doubt whether that is an arraignment of the government, and of the troops employed by them, or not. But that is a matter for your judgment. You will judge of the meaning of it; you will judge of the subject to which it is applied; and if it is a criminal arraignment of these troops, acting under the orders of the officers employed by the government of this country, you will find your verdict one way; but if you are of opinion that the contest is to reduce innocent subjects to slavery, and that they were all murdered, why then you may form a different conclusion with regard to the meaning and application of this paper.' Here was a clear and distinct allowance of the whole right of judging of the law and fact, conceded by this great authority for the doctrine. Here he had the proof of inconsistency so glaring, as very much to affect the influence of the authority on the doctrine. He was aware that there never was, perhaps, a great authority who was at all times consistent with himself. An opi-

nion given in one set of circumstances, when brought into another situation diametrically opposite, might not be equally sound and applicable. He might find, upon further proof, that his opinion was erroneous, or, at least, that it was fallible. The inconsistencies of great men did not always prove that they were bad men : they proved, perhaps, that their arguments were not always good. There was not to be found in history, nor perhaps in romance, a single authority who could be taken through life, and found to have never changed an opinion, or had occasion to vary a doctrine. No man could obstinately persist, perhaps, in all that he had ever thought and said upon every subject, without violating the duties of justice and equity. On this subject was it not greatly for the interests of the public justice, that none of the authorities who had supported this doctrine had supported it invariably? for it was a doctrine that, carried to its extreme, would be fatal to Englishmen. For let them see how it would apply to high treason. He needed not say, that written or printed papers might be taken as overt acts of high treason. Imagining the king's death, or raising insurrection, might be the overt acts in the indictment. If this course was pursued, which might be done, although undoubtedly they might take another course, and exhibit the paper without reciting it literally—but if it were done, what muſt be the consequence? The jury would be told that they had nothing to do with the matter of the paper—they were only to prove the writing and publication—the court would afterwards decide whether it was high treason or not;—and thus, instead of having his life in the hands of twelve men, his peers, he might be hanged, drawn, and quartered, on the decision of our lawyers, deciding, not from the view of the facts, but from books in their closets; and thus he was robbed

of

of the inherent right of an Englishmen—trial for his life by jury. The case is different in libel only, as the punishment for libel was less severe than high treason: but the principle was exactly the same; and in this way, the citizens of this country were to be subject to fine, imprisonment, and pillory, with all the shame and danger that belonged to the latter; not by the decision of their peers—not by the trial by jury—but, as he had said, by the opinion of four lawyers.—He meant no disrespect by the term lawyers—but by four men instead of twelve. He had asked different professional gentlemen in that house, whether it was possible, that what he had stated in regard to high treason, could not happen by the extension of this doctrine?—He found them differ on the subject: one said, he thought it could not happen; another, that it must happen.—For himself, he saw no possible difference; and the very circumstance of its being doubtful, ought to make them eager for an explanation.—He had confined himself throughout his observations to criminal trials. In the other mode of prosecuting for libels, that of seeking redress by an action, the true and most equitable means in all private cases of outrage, even there it was not enough for the plaintiff to prove that he had suffered injury, he must prove that injury was occasioned by the defendant's guilt. He would illustrate this by one or two instances: if he would write a character of a servant to a gentleman desiring him to give a character, and he would truly and conscientiously declare, that he was unworthy of trust—this would not be a libel, although the servant should prove a loss by it, unless it was proved, by some other circumstances, that there was malice and falsehood. But how did the law act? By an evasion.—In the first case, it said, that the sending the letter to the gentleman, an honest answer to his request,

was no publication; but if there was malice, it was a publishing. In like manner, if a person should write to a father, that his son was fallen into bad courses; this would not be called by the law defamatory, but reformatory—unless it were proved that the gentleman sending the letter had married the niece of the father, the next of kin to the son, and thereby giving a suspicion that the words were written falsely and wickedly to alienate the ather from the son, and thereby induce him to leave his fortune to his niece. In all these cases, the law required that the jury should be fully possessed of the guilt, before they could find redress; and he mentioned them only to prove that in both cases the guilt must be made manifest to the jury. He mentioned the case also of threatening letters, and the opinion of Baron Hotham, as farther illustrating his doctrine. He proposed, therefore, that the house should go into a committee, as the best means of devising the proper remedy for this evil.—He was ready to own that it was much easier to find fault, than to find a remedy.—It was not for his talents, or for his knowledge, to attempt it alone; but if they would go into a committee, they might then, with the assistance of almost all the abilities in the house, consider maturely what would be the wise course to pursue. He would state shortly what his ideas were: that in the committee they should move for a declaratory bill, ſtating clearly what the law was; or if this should be thought improper, or insinuating that the law had not been truly administered, then to bring in a short bill to settle the law, and make it partly enacting, and partly declaratory. In the committee they might also take some step with regard to Luxford. By this means they might get rid of these special verdicts, and of all the unintelligible arguments by which they were supported. He observed, that

they were in their nature optional: for the jury could always bring in a verdict of not guilty, according to the argument of the advocates for that doctrine. A real special verdict would not answer their views; they must have the word guilty in it, or they could do nothing. What was this but deceiving the jury, and striving to catch them by a mere word? It was time to correct the bad practice.

Whether truth ought to be deemed a libel? is a question upon which Mr. Fox said, he felt extreme difficulty in laying down any general rule. There was an apparent absurdity in saying that truth could be a libel in any case. Yet there were cases in which it might have all the effects of a libel. If, for inſtance, it was brought forward with a malicious intention—if a person were to publish any personal infirmity of another, or the misconduct of his near connexions, that might seem contemptible in the eyes of the world, but too apt to treat infirmity and misfortune as crimes and vices; truth, in that case, would be no justification: but, in the case of public men, in whose conduct the public had an interest to prove the truth of what was said of their public acts, truth ought to be a justification. Were a minister, or a member of parliament, to make false assertions, for the purpose of deceiving and deluding the public, this would be fit matter for public discussion; and to prove the truth, ought unquestionably to justify him who published it. On this point, however, he rather chose to attempt nothing, than to run the risk of failing, and of losing all that he hoped to do beside. His own opinion was, that proof of the truth ought to be admitted, and the jury left to decide how far it was a justification or an aggravation of what was complained of. But this he did not mean to bring forward at present. What he had undertaken, much be-

yond his strength, more especially when theories of the constitution were held forth as the test and criterion of men's opinions and attachment, was to repair a breach in the popular judicature. It was the fashion to indulge in encomiums on the triple form our constitution, and the stability which it derived from the due balance of its component parts. He, whose understanding was not so enlarged as to comprehend those abstract speculations, was content to look to the main-springs of the constitution, and to see that they were preserved in proper strength. The representative voice of the nation, speaking through that house, and the judicial power exercised through the medium of the people, he conceived to be the spring which kept the whole in motion. If these were preserved entire, the rest would be in no danger: if these were impaired, the theoretical fabric would soon crumble to duſt. The popular judicature could not exist, unless the jury were to decide on the law and the fact conjointly in all cases alike. Judges from precedents and books could not decide on the motives of men, on the springs and feelings of the heart: that must be left to their peers, who had common feelings and common springs of action to themselves.—On the case of Luxford, he meant to move, that an humble address be presented to his Majesty, to remit the most rigorous part of the sentence; and also a resolution, that the sentence, in the judgment of the house, was not duly proportioned to the offence. If other gentlemen should differ from him on these points, let them not on that account reject all that he proposed. He was so desirous of doing some good, that he would not dispute about the mode of doing it; and if any other should be proposed to effect the same end, he should be ready to adopt it. His motion would be the same with that formerly made by Mr. Serjeant Glynn on the case of Woodfall,

Woodfall, which he himself had opposed on the grounds that he now found to be erroneous. The reason that operated with him, and with the house to reject that motion, was, that they did not think what they conceived to be the law, so much weakened by the occasional practice of the courts, as to require a declaration. Since that time, the practice had acquired additional strength by new cases, particularly that of the dean of St. Asaph, and had been pretty uniform for several years. A small difference had indeed occurred in the direction of the judge to the jury in the case of Topham: but he conceived the practice to be now so confirmed, that the house must declare what the law was, or admit the practice of the courts to be the law.—His learned friend (Mr. Erskine), whose great abilities would supply what he left deficient, would have the honor of crowning in that house what he had begun elsewhere—That in all cases when the general issue was joined, the jury should have the undoubted right of giving a general verdict."

Mr. Fox then moved, "That leave be given to bring in a bill to remove doubts respecting the rights and functions of juries in criminal cases."

MR. ERSKINE's SPEECH,

ON THE SAME SUBJECT.

Mr. Erskine, in rising to second the original motion, declared his inability fully to express the gratitude which he, as one of the public, felt to the honorable gentleman who had just sat down, for this instance of the many endeavours which he had made to establish the principles of the constitution upon their true basis, and to promote the best interests of the country. The panegyric which had

been made on the arguments, which he had brought forward on a former occasion, must indeed lose much of its force, when those were compared with the arguments which had now been advanced. The objects of the present motion were two: first, the practice of the courts with regard to libels; and, secondly, the information by *quo warranto*. The motion, he trusted, would be unanimously adopted, from the declaration of his honorable friend, that, whatever might be the opinion of gentlemen, with regard to a particular prosecution, he trusted it would not interfere with their sense of the necessity of attending to the great and general object. Nothing was so well calculated to prove how much this unanimity might be expected, as the circumstance, that, though he differed with his honorable friend, with regard to the particular prosecution, he now rose to second his motion. He meant, however, likewise, to differ in his mode of treating the subject. His honorable friend had taken it analytically; he meant to take it the other way; and, instead of reasoning from any particular case to the original causes, to begin from the origin, and thus trace it in its effects. The positions with which he would set out were,

1st, That the law of libels was repugnant to the principles, and inconsistent with the practice of criminal justice.

2dly, That it cramped the liberty of the press, promoted its licentiousness, and brought our most valuable privilege of juries into continual danger.

3dly, That the evil was, in its present stage, incurable.

Lastly, That the subject was too complicated for any individual to bring in a bill which should fully answer the purposes proposed, and required immediately the interference

terference of the house. He should beg to enter his protest in what he was going to say against ideas of conveying blame or censure on the conduct of any of the judges. So far was he from entertaining any intention of this sort, that he was convinced, that if his Majesty should place him in the same situation, he could not, consistently with the constitution, adopt any other line of conduct than that which was pursued by them. Libels might be divided into three classes. 1st, Those which were subjects of civil action, as those which affected lives, property, liberty, or which occasioned any actual damage. 2dly, Those which were punishable by indictment, which included all that might any way disturb the public peace. The third class took in those libels, which were of most important consideration, all those which had a tendency to sow sedition. The law of libels, by civil actions, was as ancient as the law itself. Reputation ought to be secured by law. A good name was a property no less valuable than an estate, and which, in case of any injury, ought equally to admit the means of redress. The judges, no doubt, were the depositaries of law in matters of property. But what had a tendency to undermine and utterly destroy the constitution, was the circumstances of confounding crimes with civil actions. It was this circumstance which brought into hazard our most invaluable privilege of juries; a part of the constitution which ought to be looked on with the most peculiar reverence. The jury he regarded as the commons house of the judicial system, as affording a safeguard to the people, which excluded the encroachments of power, and the injuries of oppression. Government, it was well known, was now to be supported upon the foundation of reason. It derived its sacred nature from the advantages which it produced to its subjects, and

maintained

maintained its authority from the blessings which were enjoyed under its administration. The monarchy of Great Britain, for which, however, no man could entertain a higher respect, would not exist one hour, if the spirit of the inquiry of his honorable friend was not adopted. Yet this monarchy he would wish to be immortal. It possessed all the speedy execution of the most absolute monarchy, while the freedom of the most perfect democracy was secured by the representation of the people in the house of commons, and the trial of juries. The grand and petty juries were placed as a protection between the crown and the people; and were it not for the intermediate security which they afforded, the power of the crown would turn into dust the liberties of the people. Yet he could prove, that the trial by jury did not exist in those cases which affected the liberty of the press, by which opinions were communicated, information extended, and effects produced of the greatest magnitude in any season of national alarm and danger. The constitution made a difference between civil and criminal cases. But here was the misery of that practice, which he was now to state. A learned judge had alleged, that they were entitled to apply the same rules in both cases. But, in order to shew the power that was given to the judges in a civil case, it was entered upon the record, and they afterwards were entitled, if it should not meet with their approbation, to set aside the verdict of the jury. But in a criminal case, though it was stated in the record, it was necessary to ask leave of the people, and the jury, if they pleased, might throw out the bill. The difference was, that in the one instance it came from the authority of the court, and, in the other, from the authority of the people. To diminish the privileges of juries, was to throw away the only security which the people

people at present possessed from the prerogative of the crown. In civil cases, not only the authority of the judges was established to judge of the law, but likewise to prevent the jury from interfering with what, in this respect, fell immediately under their province. Law and fact were kept as much asunder by the principle of our constitution, as night and day by the established system of nature. Matters of property were wisely deemed too intricate for the decision of a jury. But crimes, whose guilt consisted in their intention, were peculiarly fitted for their consideration, and could only properly be ascertained by their verdict. In cases of property a new trial might be moved for. But if the jury should acquit a criminal, not even the King could afterwards attaint him. In the one case, the business originated from the court; in the other, from the people. In the one case, the verdict might be thrown out, but the other could not. He stated that, by the present system of things, by merely entering *literatim* upon the record, a man might be hanged by the Attorney-General for high treason: in such an exercise of authority as this, there was an end of the protection of juries. In the present way of treating libels, the judge says to the jury, 'If you find the publication, you are bound to find him guilty; if we find him not guilty of a libel, there may then be an arrest of judgment.' But should he, as counsel for the defendant, move an arrest of judgment upon the plea that there was no libel, the judges would answer, 'That the jury had already found the malicious intention.' In so enlightened an age, the absurdity of the case was indeed astonishing. In the instance of a duel, where the alternative was, either that the individual should be banished from society, or expose himself to the hazard of taking away the life of another, at an equal risque of his own, the crime was murder; yet during

ing the course of his experience, in such an instance murder had never been found. Yet it was in the power of the Attorney-General to render it murder, by putting *literatim* on the record. If the defendant shall appear guilty of all those facts by the verdict, he must be found guilty; but if there should afterwards be discovered to have existed no malicious intention, judgment may be arrested. He should now, taking an opposite course from his honorable friend, inquire how the evil began. He thought that the judge ought to state his opinion in libels as in all other cases, and trust the decision to the good sense and equity of the jurors, which he seldom knew to fail. Upon the arrival of letters, printing soon discovered the influence which it possessed over the state, and employed itself in political and theological discussion. The Star-Chamber was then invented, in order to exclude the interference of juries to punish any attempt that might be made to detect the misconduct of a bad government, and the errors of a false religion. In wishing to abolish this most tyrannical, unjust, and oppressive engine of power, the Star-Chamber, it was certainly the wish of the people to unite the harmonious system of judge and jury, the one communicating light from the sources of law, the other inveſtigating the nature of facts, and co-operating in the impartial execution of justice. After the abolition of the Star-Chamber, there had taken place, before the Recorder, the trial of Penn and Mead, who had been accused of seditious preaching in Grace-church. The jury found only a verdict, guilty of speaking to so many people, and though the judge sent them back, yet, as they would bring no other verdict, he fined each of them a few marks. One of these jurors, a second Hampden, resisted this unjust sentence, not on account of the sum required to be paid, which was trifling, but because if he should pay a farthing,

thing, he should regard himself as submitting to humiliation, dangerous to the liberties of his country, and becoming a slave by his own act. He would quote a respectable authority, that there never could be a question of law unmixed. There must first be proved the facts, from which the law was to be raised. If the judge told the jury, that unless they acted so and so, they would be transgressing their duty; it was putting them under a restriction more grievous than the penalty of imprisonment; it was an imprisonment of the mind. There was no fine to which he would not rather submit than such a restriction; of a fine, he knew the extent, and he might console himself under it, with the reflection of the benefit that would accrue to the country from his verdict: but this was wounding to him on the side of conscience; it was straitening him in the road of duty. If the judge and jury, inſtead of respecting in one another the knowledge and abilities of which both were possessed, inſtead of co-operating in the same great end, the impartial administration of juſtice, bitterly opposed one another, what conſequences could be expected to follow? It was Lord Raymond, who, upon the publishing the Craftsmen, had said, that certain persons had taken up a notion that it was the business of a judge to explain to the jury the law; but no such practice really existed, yet, ſtrange it was, that he should have said this in the teeth of the decision in the trial of the seven bishops. The judges there, though under the corrupt influence of the crown, falsely gave it as their opinion, that the petition was a libel, yet had referred it to the decision of the jury. The jury gave as their verdict, that it was no libel; and notwithstanding the consequences of this verdict, and the complexion of the times, they incurred no penalty, nor even blame. The judges had given their opinion in order to please the King,

but

but they had not attempted to exercise authority; a sure indication of their consciousness they did not possess it.

"In the case of the dean of St. Asaph, in which he was concerned, the conduct of the opposite counsel had been highly honorable. Though he stood with a brief for the crown, he would not surrender the privileges of the people; yet, that which was conceded him by the adverse counsel, was not granted him by the court. In the case of the King and Franklin, it was diverting enough to consider the only argument that had been advanced, and with no small importance on the other side. A precedent, it seemed, had occurred during the time of Sir P. Yorke, in which a decision had taken place for the people. A song, called *Packington's Pound*, was composed on the occasion, the writer of which, it is said, exulted, as if the judges had been outwitted, and the victory snatched from them by the jury. As a proof of this, a line, speaking of the jury, had been quoted,

"Were judges of *fact*, but not of *law*."

Unhappily, however, this line, on which so much stress had been laid, which had been produced as confirmation strong as proofs of holy writ, has been quoted from an erroneous copy; the line literally stood thus,

"Were judges alike of the *fact* and the *law*."

Thus by the literal quotation, was the argument reserved, and all the ingenious syſtem that had been built on it, completely overturned.—He would now state what, from his own experience, he was enabled to do, what had been the effects of this system. He had now been engaged thirteen years at the bar; during which he had had occasion to see and be acquainted with much practice. The officers of the crown, in the discharge of their duty, he had found always

always to behave with mildness and moderation. But he was of opinion, that the matter ought to be left entirely to the jury; he would pledge himself, that in this event they would do their duty. To them it belonged, and to them it should be entrusted to decide, Whether what was accused as a libel, was in itself innocent, meritorious, or malicious? The consequences of adopting the opposite system was a perversion of justice; it was impossible to punish the criminal. In the present circumstances, every man was regarded by the jury as a victim whom they were solicitous to save. The advice which they should give to any friend, applying to him in the case of a libel on his character, or dearest connexions, would be, not to prosecute, since, by so doing, he should only confirm the slanders, and leave his adversary to enjoy the triumph of impunity. He wished, for the sake of that unanimity which was so desirable on the present question, that his honorable friend should shove aside the matter which he had commenced. He indeed could not help taking notice of it, since it was this which first set to work the vast engine of his mind. He wished that nothing might be introduced in this business, which would at all interrupt the harmony with which it might be renewed, that every thing should be avoided which should seem to lean either to one side or the other, and that it merely be made the instrument to establish the constitution upon its true principles. There was, no doubt, an inquisitorial power of this house over judges; it was the great key-stone of the constitution; but this power ought to be very cautiously and sparingly exercised; it ought to be kept in those recesses of the constitution, from which it should only be produced on occasions of the greatest emergency. It was not even desirable to speak hastily of the conduct of the judges in that house, as what was said there might

be liable to misrepresentation. He should mention one instance more of the oppression of the present system. An insinuation had appeared in one of the papers, that the Ruſſian ambassador was a spy. He should not even mention the name of his client, who had been accused with this insinuation as a libel; he was unwilling to renew any unpleasing remembrance. He had been sentenced to the pillory; yet he had produced in court an attestation of a physician, that, at the time this paragraph appeared, his client had been delirious.

He concluded with giving his most entire and cordial approbation to the motion.

THE END.

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